

San Francisco Law Library

No.

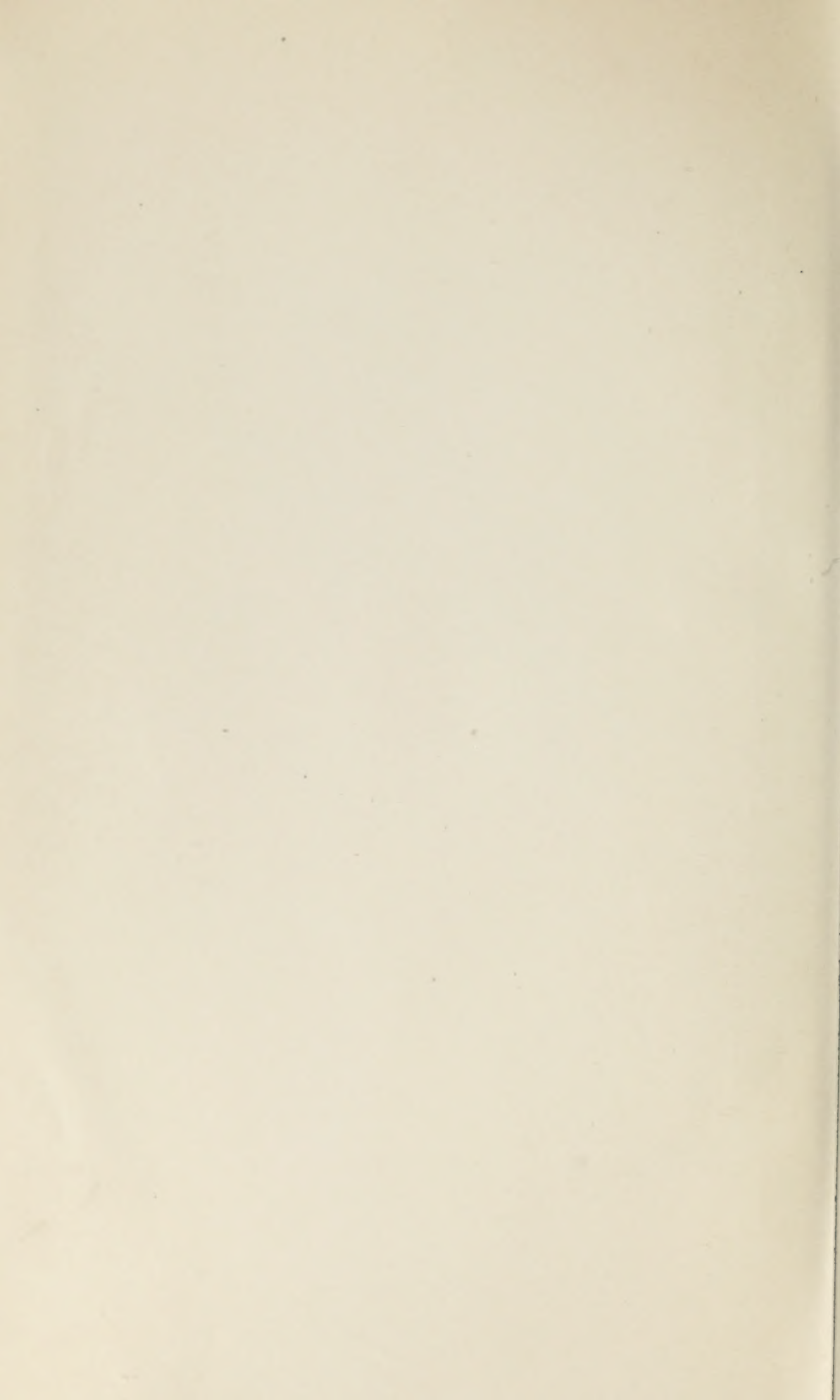
Presented by


.....

EXTRACT FROM BY-LAWS.

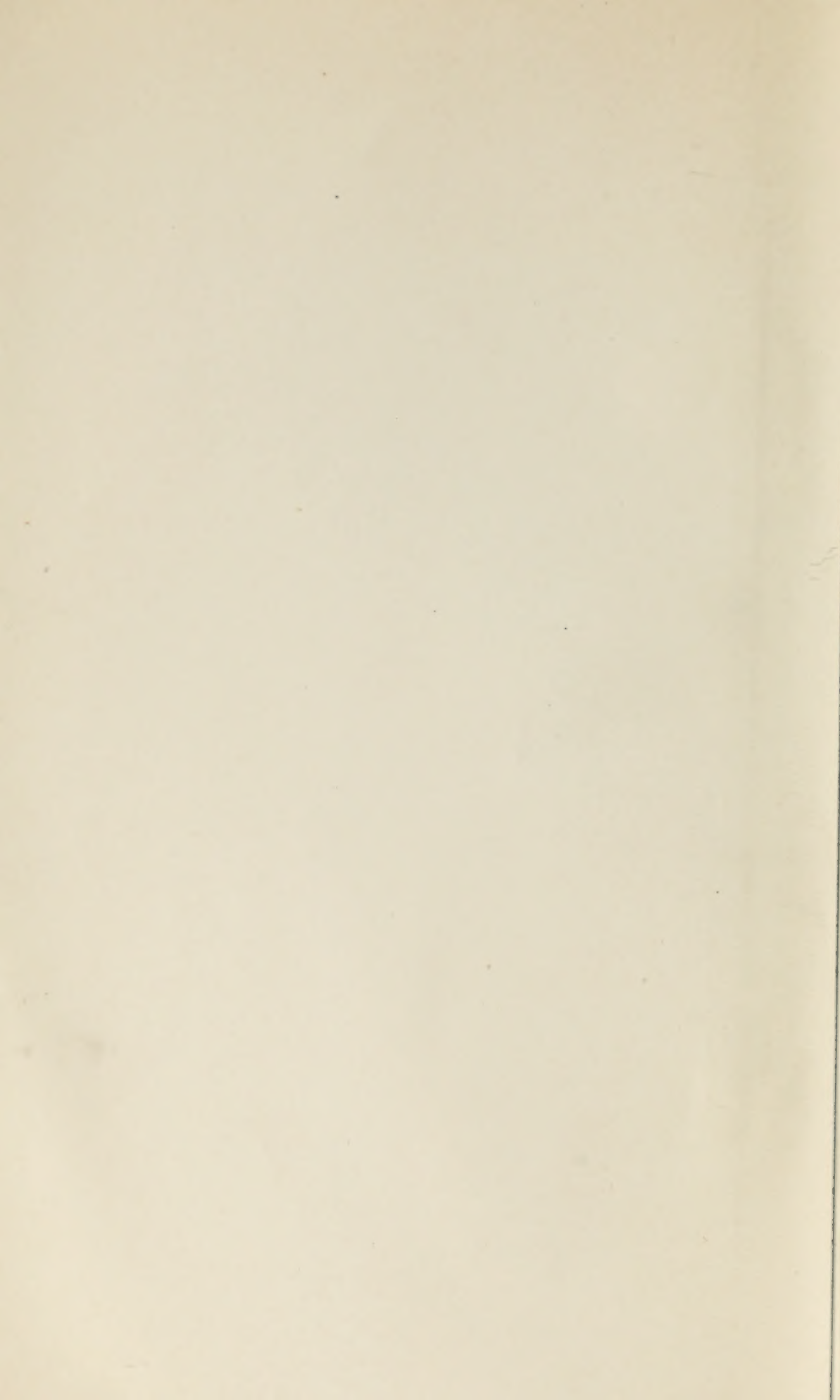
Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. A party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.





Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov



869
868
No. 2393

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

THE STEAMER SAMSON, and BARGE NO. 8
BARGE NO. 9 and BARGE NO. 27,

COLUMBIA CONTRACT COMPANY, a Corporation,
Claimant and Appellant,
SHAVER TRANSPORTATION COMPANY, a Corporation,

Libellant and Appellee,
STANDARD OIL COMPANY OF CALIFORNIA, a Corporation,

Respondent in Personom.

Appeal from the District Court of the United
States for the District of Oregon.

TRANSCRIPT OF RECORD.
(In Three Volumes)

VOLUME I.
Pages 1, to 588 Inclusive

FILED

MAR 30 1914

United States

1900

THE STATE OF

NEW YORK

IN SENATE

JANUARY 1, 1900

REPORT

OF THE

Records of H. S. Ancient
and of appeals
869

No.

IN THE

United States Circuit Court of Appeals

NINTH CIRCUIT

THE STEAMER SAMSON, and BARGE NO. 8
BARGE NO. 9 and BARGE NO. 27,

COLUMBIA CONTRACT COMPANY, a Corporation,
Claimant and Appellant,
SHAVER TRANSPORTATION COMPANY, a Corporation,

Libellant and Appellee,
STANDARD OIL COMPANY OF CALIFORNIA, a Corporation,

Respondent in Personam.

Appeal from the District Court of the United
States for the District of Oregon.

TRANSCRIPT OF RECORD.

(In Three Volumes)

VOLUME I.

Pages 1, to 588 Inclusive

IN THE
United States Circuit Court of Appeals
NINTH CIRCUIT

THE STEAMER SAMSON, and BARGE NO. 8
BARGE NO. 9 and BARGE NO. 27,

COLUMBIA CONTRACT COMPANY, a Corporation,
Claimant and Appellant,
SHAVER TRANSPORTATION COMPANY, a Corporation,
Libellant and Appellee,
STANDARD OIL COMPANY OF CALIFORNIA, a Corporation,
Respondent in Personom.

**Names and Addresses of Proctors
upon this Appeal:**

For Claimant:

Teal, Minor & Winfree, Spalding Bldg., Portland, Oregon

For Libellant:

Wood, Montague & Hunt
Spalding Bldg., Portland, Oregon

For Respondent:

Snow & McCamant, Northwestern Bldg., Portland, Oregon

INDEX.

Volumes 1 and 2 indexed separately.
Complete index can be found in Volume 3.

	Page
Amended Libel	1
Answer	9
Answer of Claimant to Supplemental Libel.....	29
Answer of Respondent to Supplemental Libel.....	39
Argument C. E. S. Wood	587
Cost Bill—Respondent's	68
Cost Bill—Libellant's	74
Cost Bill of Standard Oil Co.—Objections of Libellant to	78
Claimant's Objection to Cost Bill of Libellant.....	79
Cost Bill of Libellant—Claimant's Objection to....	79
Claimant's Objections to Cost Bill of Standard Oil Co.	82
Cost Bill of Standard Oil Co.—Claimant's Objection to	82
Cost Bills—Opinion on—Objections to.....	85
Cost Bills—Order Settling	90
Decree—Final	66
Final Decree	66
Libel—Amended	1
Libel—Supplemental	18
Libellant's Cost Bill	74
Merits—Opinion on the	52
Opinion on the Merits	52

INDEX.

	Page
Objections of Libellant to Cost Bill of Standard Oil Co.	78
Opinion on Objections to Cost Bills	85
Order Settling Cost Bills	90
Respondent's Cost Bill	68
Supplemental Libel	18
Supplemental Libel—Answer of Claimant to.....	29
Supplemental Libel—Answer of Respondent to....	39
Testimony—Libellant's.	
Captain Edward Sullivan	91-143
Alexander Martinson	111
Charles Kayser	133
Eddie Grove	280-6
Martin Loaland	331
Elias Dahl	355
Charles Johnson	386
Ole Grove	417-452-484
D. C. O'Reilly	434
Joe Oleson	479
Henry F. Stayton	487
Henry Kness	552
Capt. J. W. Shaver	556
Christopher O'Bryan	573

*In the District Court of the United States for the
District of Oregon.*

Be it remembered, that on the 15 day of February, 1912, there was duly filed in the District Court of the United States for the District of Oregon, an Amended Libel, in words and figures as follows, to wit:

[Amended Libel.]

*In the District Court of the United States
for the District of Oregon
in Admiralty.*

STEAMER "SAMSON," BARGE NO. 8, BARGE
NO. 9 and BARGE NO. 27,
COLUMBIA CONTRACT CO., a corporation,
Claimant and Stipulator,
SHAVER TRANSPORTATION COMPANY, a
corporation,
Libellant.

To the Honorable Charles E. Wolverton, and the Honorable Robert S. Bean, Judges of the above entitled Court:

By leave of Court first had and obtained The Shaver Transportation Company, an Oregon corporation, brings this its amended libel in a cause civil and maritime in collision, against the Steamer "Samson," Barge No. 8, Barge No. 9, and Barge No. 27, their tackle, apparel and furniture, engines and boilers, and articulately alleges and propounds as follows:

ARTICLE I.

Libellant is and at all times herein mentioned was a

corporation organized and operating under the laws of the State of Oregon, and has its principal office in the City of Portland, State of Oregon, and has paid the license fees by law required, and is qualified to sue in any court.

ARTICLE II.

The Steamer "M. F. Henderson" at all times and to wit on July 22, 1911, was the property of the libellant and was a steamer used in towing on the Columbia and Willamette Rivers, and was of the length of 158 feet, breadth of beam 31 feet, depth 7 feet 5 inches, and was on said last named date of the value of to wit fifty thousand dollars (\$50,000.00).

ARTICLE III.

On to wit July 21, 1911, "The Standard Oil Company, Incorporated Under the Laws of the State of California," a corporation of the State of California, hereinafter called the Standard Oil Company, requested Oregon Round Lumber Company, an Oregon corporation, to procure and furnish a steam tug to act as the motive power in towing the Standard Oil Company's oil Barge No. 93 from Astoria, Oregon, to Portland, Oregon; and Oregon Round Lumber Company, pursuant to said request, on July 21, 1911, and as agent for the said Standard Oil Company, requested libellant to furnish only the motive power for towing said Barge No. 93 from Astoria to Portland as aforesaid under the supervision and direction of the pilot, officers and crew of the said Standard Oil Company.

ARTICLE IV.

Pursuant to such request and instructions and directions the Steamer "M. F. Henderson" made fast to said Oil Barge No. 93 on the port side of said barge at to wit six o'clock P. M. on July 21, 1911, at Astoria, Oregon, and proceeded on the voyage from Astoria to Portland up the Columbia River without incident until to wit 1:30 A. M. of July 22, 1911. At this time last mentioned the night was clear and dark, without haze or fog, and no moon, and the "M. F. Henderson" and Oil Barge No. 93 were proceeding at to wit three (3) knots past the land, well under control, with all lights set and burning, as required by law, to wit, a green side light on the starboard side of Oil Barge No. 93 and a red side light on the port side of the "Henderson," two white lights on the mast-head of the "Henderson," and one white stem light on the "Henderson." At the lower end of Puget Island in the Columbia River the pilot and lookout on the "M. F. Henderson" and Oil Barge No. 93 observed to wit, two miles away up river, what afterward proved to be the "Samson" with Barges No. 8, No. 9 and No. 27 in tow, going down the river, coming around the point of Puget Island. The "Samson" at this time was running at, to wit, more than four (4) knots past the land. There was a strong ebb tide, to wit, a nine foot tide of about half head. The "Samson" was towing the barges aforesaid as what is known as a spiked tow, to wit, Barge No. 8 was made fast to the starboard side of the "Samson," projecting

forward beyond the "Samson;" Barge No. 9 was made fast to her port side projecting forward equally with Barge No. 8 on the starboard side; and Barge No. 27 was between them, the stern of said barge being in line with the stem of the tow-boat "Samson." At this time the "Samson" and her tow showed Oil Barge No. 93 and the "M. F. Henderson," proceeding as one vessel under power of the "Henderson" and under the direction and control of said Oil Barge No. 93, her side lights, two masthead lights, and one white light on the forward end of Barge No. 8 on the starboard side of the "Samson," and there was no light on Barge No. 9 on her port side, nor were any other lights displayed by the "Samson" or her tow. The "Samson" is 110 feet 4 inches in length, 25 feet 4 inches beam, and 15 feet 6 inches deep, and her draft at this time was feet. Barges No. 8 and No. 9 are to wit 160 feet length, 38 feet beam, 9 feet depth, and at this time had a draft of feet. Barge No. 27 is 150 feet long, 36 feet beam and 9 feet depth, and at this time had a draft of feet. Oil Barge No. 93 is 300 feet in length, 34 feet beam, and at this time had a draft of $20\frac{1}{2}$ feet. The "M. F. Henderson" was of the dimensions aforesaid, and at this time had a draft of 5 feet. The channel in the Columbia River at and near the place hereinbefore described, to wit, between Puget Island and the Oregon shore, is half a mile wide, and the channel for vessels of the draft of the "Samson" and her tow is, to wit, 2500 feet wide; and Barge No. 93 and the "Henderson" were, by their

lights then set and burning as aforesaid, in clear view of the "Samson" for a distance of at least two miles for a time of at least minutes. When the "Samson" and her tow were, to wit, not less than half a mile from the "Henderson" and Oil Barge No. 93, said Barge 93 gave the signal to the "Samson" that said Oil Barge No. 93 would continue on the starboard side of the channel and pass to the port of the "Samson," to wit, one long blast of the whistle; which signal was promptly answered and accepted by the "Samson" to wit by one blast of the whistle. Barge No. 93 and the "M. F. Henderson" were at this time near a point on the river known as Bugby's Hole, and were well on the starboard side of the channel toward the Oregon shore, and were hauled and for a long time previous thereto had been hauled well inside the Hunting Island range lights to show to the "Samson" before the whistle blast was given that Barge No. 93 intended to keep to the starboard side of the channel and pass to the port of the "Samson." Notwithstanding such signal and its answer, the "Samson" did not effectively alter her course, and both her side lights remained visible to Barge No. 93, and Barge No. 93 continued to haul more and more toward the Oregon shore, and the "Samson" continued to approach Barge No. 93. The "Samson" not hauling toward her own side of the channel, to wit, her starboard side toward Puget Island, Barge No. 93 gave a warning signal of her continued intention to pass on the port side of the "Samson," to wit one

long blast of the whistle, when the "Samson" was well able to safely conform her course to such notice, to wit fully five minutes away, and still the "Samson" not altering her course, the Barge No. 93 and the "Henderson" immediately put their helms hard aport and made for the Oregon shore, but too late to avert a collision. The "Samson" and her tow collided with the "M. F. Henderson" at, to wit, a point approximately near the forward end of the freight house of the "Henderson" and crushed the hull and the house of the "Henderson" so that she shortly sank and became a total wreck. As the boats came together, Barge No. 93 immediately let go her anchor and came to rest within, to wit, 300 feet of the Oregon shore and approximately near that point on the river designated as Bugby's Hole. The force and shock of the collision broke the lines by which the "Henderson" was made fast to Oil Barge No. 93, and the shock, together with the current of the river, carried the "Henderson" some distance, to wit feet below the Oil Barge No. 93 at anchor, and the "Henderson" sank in feet depth of water and became a total wreck as a vessel and a total loss, save and except for certain salvage of machinery as hereinafter alleged.

ARTICLE V.

That said collision and loss and damage were wholly occasioned by the fault and negligence of the Steamer "Samson."

ARTICLE VI.

That at the time of said collision the Steamer "Henderson" had on her, not a part of her regular equipment and in addition to the said value of \$50,000.00, as supplies and stores, articles of the value of fifteen hundred dollars, which were wholly lost by reason of said collision and libellant is thereby damaged in the sum of fifteen hundred dollars with interest.

ARTICLE VII.

That libellant has expended in the raising of the said "Henderson" after said collision, and of salvage of said "Henderson" and equipment the sum of, to wit, ten thousand dollars, and libellant has been and is damaged by reason of said collision in the sum of ten thousand dollars, with interest.

ARTICLE VIII.

That by reason of said expenditure as just aforesaid libellant recovered salvage of the value of to wit, sixteen thousand dollars.

ARTICLE IX.

The total net damage sustained by libellant by reason of the said collision was and is the sum of to wit, forty-five thousand five hundred dollars (\$45,500.00) with interest.

ARTICLE X.

No parts of said loss and damage has been paid to libellant and the Steamer "Samson," Barges No. 8, No. 9 and No. 27 refuse to pay said damages or any part thereof.

ARTICLE XI.

The Steamer "Samson" and Barges No. 8, No. 9 and No. 27 are now on the Columbia River, and they and all the matters and things alleged herein are within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, and the Columbia Contract Company, an Oregon corporation, has claimed the said "Samson" and barges as owner thereof and has filed in this Court and cause a stipulation in the sum of fifty thousand dollars (\$50,000) stipulating to abide the decree of this Honorable Court.

ARTICLE XII.

That all and singular the premises are true.

WHEREFORE, libellant prays that process in due form of law may be issued against the said Steamer "Samson" and the said Barge No. 8, the said Barge No. 9, and the said Barge No. 27, and each of them, their boats, tackle, apparel and furniture, and that this Honorable Court will pronounce for the aforesaid demand of libellants against the aforesaid Steamer "Samson" and the said Barge No. 8, said Barge No. 9 and said Barge No. 27, and against any and all persons claiming the same or who may intervene for any cause therein, and decree that the demand of libellant be paid with interest and costs; and for such other and further relief as to right and justice may appertain and as this Court is competent to give.

SHAYER TRANSPORTATION COMPANY.

By J. W. Shaver,

President.

WILLIAMS, WOOD &
LINTHICUM,
Proctors.

[Endorsed]: Amended Libel. Filed Feb. 15, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 22 day of April, 1912,
there was duly filed in said Court, an Answer, in
words and figures as follows, to wit:

[Answer.]

(Title.)

Columbia Contract Company, a corporation, owner
and claimant of the Steamer "Samson," Barge No. 8,
Barge No. 9 and Barge No. 27, as the same are pro-
ceeded against in the Amended Libel of Shaver
Transportation Company, a corporation, in a cause
civil and maritime in collision, answers said libel and
complainant as follows:

FIRST.

The claimant admits the incorporation of the libel-
lant and has no knowledge or information sufficient
to form a belief as to the other allegations of the first
article of said libel and therefore denies the same.

SECOND.

The claimant has no knowledge or information suf-
ficient to form a belief as to the allegations of the sec-
ond article of said libel and therefore denies the same.

THIRD.

The claimant has no knowledge or information suf-

ficent to form a belief as to the allegations of the third article of said libel and therefore denies the same.

FOURTH.

Answering the allegations of the fourth article of said libel the claimant alleges:

The Steamer "Samson" with Barge No. 8 made fast to her starboard side, Barge No. 9 made fast to her port side and projecting forward equally with Barge No. 9 on the starboard side, and barge No. 27 between Barges No. 8 and No. 9 and in line with the steam of the "Samson," all of said barges being loaded with rock and being towed by the "Samson" as what is known as a spiked tow, on the 21st day of July, 1911, proceeded on a voyage down the Columbia River from to the Columbia River Jetty without incident until about 1:30 A. M. of July 22, 1911.

At about the time last mentioned the steamer "Samson" and her tow were coming down the river, well under control, with all lights set and burning as required by law, to-wit, two mast headlights, the side lights and the white lights on each outside barge, and as the "Samson" and her tow passed what is known as Bugby Light, to-wit, about 1:30 A. M. of July 22, 1911, the Pilot and one of the sailors on board the "Samson" sighted what afterwards proved to be the Steamer "M. F. Henderson" with her tow, Oil Barge No. 93 about one mile away and coming up the river. The "M. F. Henderson" and her tow first opened up her red light and then the green one, the Samson and

her tow at this time being pretty well over to the Puget Island side or starboard side of the channel. As the Samson with her tow came a little closer the "M. F. Henderson" with her tow gave a signal to the "Samson" that the "M. F. Henderson" with her tow would pass to the port side of the "Samson," to-wit, one long blast of the whistle, and immediately the Samson accepted and answered said signal to-wit, by one long blast of the whistle. Thereupon, the "Samson" put her helm hard aport and the Samson and her tow kept swinging to the Puget Island side or starboard side of the channel. The "M. F. Henderson" and her tow were steering bad and would first open up her green light and then close it out again, and whilst the "Samson" had ported her helm in order to afford the "M. F. Henderson" and her tow plenty of room yet the "M. F. Henderson" with her tow kept heading right in to the "Samson." Orders had been given by the pilot of the "Samson" and obeyed at once to put the "Samson" helm hard aport, and about that time the "M. F. Henderson" gave a second signal by one big blast of the whistle which was the signal indicating her continued intention to pass to the port side of the "Samson," and which signal was immediately answered by the "Samson" by one long blast of the whistle. The Samson was at this time hard aport and immediately thereafter the Oil Barge No. 93 came close to the "Samson" and seemed to sheer off a little to the starboard side of the channel, and thereupon the "Samson" backed up wide open

and while backing the Oil Barge struck the port scow, to-wit, Barge No. 9, and about the same time struck the port barge, to-wit, Barge No. 9, the Oil Barge the "M. F. Henderson" struck the said port barge to-wit, Barge No. 9 with her stem and at or about the same time the forward barge to-wit, Barge No. 27 struck the "M. F. Henderson" at a point near the forward part of the freight house of the M. F. Henderson and the collision and subsequent sinking of the "M. F. Henderson" occurred.

The Claimants admit the allegations of the fourth article of said libel giving the dimensions of the "M. F. Henderson" Oil Barge No. 93, the "Samson," Barge No. 8, Barge No. 9 and Barge No. 27 as being approximately true.

Further answering the allegations of the fourth article of said amended libel, the claimant denies each and every other allegation of said article not hereinbefore specifically admitted.

FIFTH.

Claimant denies that said collision and loss and damage were wholly, or in part, occasioned by the fault and negligence of the steamer "Samson."

Further answering the fifth allegation of said amended libel, the claimant alleges that said collision and loss and damage was occasioned solely by the fault and negligence of the steamer "M. F. Henderson" and of her tow, Oil Barge No. 93.

SIXTH.

The Claimant has no knowledge or information suf-

ficient to form a belief as to the allegations of the sixth article of said libel and therefore denies the same.

SEVENTH.

Claimant has no knowledge or information sufficient to form a belief as to the allegations of the seventh article of said libel and therefore denies the same.

EIGHTH.

Claimant has no knowledge or information sufficient to form a belief as to the allegations of the eighth article of said libel and therefore denies the same.

NINTH.

Claimant has no knowledge or information sufficient to form a belief as to the allegations of the ninth article of said libel and therefore denies the same.

TENTH.

Claimant denies liability for said loss and damage to the "M. F. Henderson" and has refused and still refuses to pay same or any part thereof.

ELEVENTH.

Claimant admits the jurisdiction of the Court and the other allegations of the eleventh article of said libel.

TWELFTH.

Claimant denies the allegations of the twelfth article of said libel.

Claimant further answering said libel, and by way of a cross-libel, alleges:

ARTICLE I.

Claimant is and was at all times herein mentioned a corporation organized and operating under the laws of the State of Oregon, and has its principal office in the City of Portland, State of Oregon, and has paid the license fees by law required and is qualified to sue in any court.

ARTICLE II.

The Steamer "Samson," Barge No. 8, Barge No. 9 and Barge No. 27 at all times and to-wit, on July 22, 1911, were the property of the claimant and were used on the Columbia and Willamette Rivers.

ARTICLE III.

The Steamer "Samson" with Barge No. 8 made fast to her starboard side, Barge No. 9 made fast to her port side and projecting forward equally with barge No. 8 on the starboard side, and barge No. 27 between Barges No. 8 and No. 9 and in line with the steam of the "Samson," all of said barges being loaded with rock and being towed by the "Samson" as what is known as a spiked tow, on the 21st day of July, 1911, proceeded on a voyage down the Columbia River from below Goble to the Columbia River Jetty without incident until about 1:30 A. M. of July 22, 1911.

At about the time last mentioned the steamer "Samson" and her tow were coming down the river, well under control, with all lights set and burning as required by law, to-wit, two mast headlights, the side lights and the white lights on each outside barge, and

as the "Samson" and her tow passed what is known as Rugby Light, to-wit, about 1:30 A. M. of July 22, 1911, the Pilot and one of the sailors on board the "Samson" sighted what afterwards proved to be the Steamer "M. F. Henderson" with her tow, Oil Barge No. 93 about one mile away and coming up the river. The "M. F. Henderson" and her tow first opened up her red light and then the green one, the "Samson" and her tow at this time being pretty well over to the Puget Island side or starboard side of the channel. As the "Samson" with her tow came a little closer the "M. F. Henderson" with her tow gave a signal to the "Samson" that the "M. F. Henderson" with her tow would pass to the port side of the "Samson" to-wit, one long blast of the whistle, and immediately the Samson accepted and answered said signal, to-wit, by one long blast of the whistle. Thereupon, the "Samson" put her helm hard aport and the Samson and her tow kept swinging to the Puget Island side or starboard side of the channel. The "M. F. Henderson" and her tow were steering bad and would first open up her green light and then close it out again, and whilst the "Samson" had ported her helm in order to afford the "M. F. Henderson" and her tow plenty of room yet the "M. F. Henderson" with her tow kept heading right in to the "Samson." Orders had been given by the pilot of the "Samson" and obeyed at once to put the "Samson" helm hard aport, and about that time the "M. F. Henderson" gave a second signal by one big blast of the whistle which

was the signal indicating her continued intention to pass to the port side of the "Samson," and which signal was immediately answered by the "Samson" by one long blast of the whistle. The Samson was at this time hard aport and immediately thereafter the Oil Barge No. 93 came close to the "Samson" and seemed to sheer off a little to the starboard side of the channel, and thereupon the "Samson" backed up wide open and while backing the Oil Barge struck the port scow, to-wit, Barge No. 9, and about the same time struck the port barge, to-wit, Barge No. 9, the Oil Barge the "M. F. Henderson" struck the said port barge to-wit, Barge No. 9 with her stem and at or about the same time the forward barge to-wit, Barge No. 27 struck the "M. F. Henderson" at a point near the forward part of the freight house of the "M. F. Henderson" and the collision and subsequent sinking of the "M. F. Henderson" occurred.

ARTICLE IV.

Said collision was not caused or contributed to by any negligence on the part of the claimant or of those in charge of said Steamer "Samson," Barge No. 8, Barge No. 9 and Barge No. 27, but was caused wholly by the fault and negligence of the Steamer "M. F. Henderson," and her tow.

ARTICLE V.

By reason of said collision the claimant was damaged in the sum of \$604.12, to-wit:

Loss of one day's use of the Steamer "Samson"

and the cost of operation\$133.50

Loss of one day's use for the Steamer "Hercules" (which was making a joint trip in connection with the "Samson," and the cost of operation	111.00
Loss of one day's use of six barges at \$15.00 per day and loss of one day's use of three barges at \$12.00 per day	126.00
Amount paid for repairs to barges necessitated by reason of said collision	188.62
Loss of use of said barges while being repaired	45.00

ARTICLE VI.

No part of said loss and damage has been paid to claimant and the Steamer "M. F. Henderson," Oil Barge No. 93 and libellant herein, Shaver Transportation Company refuse to pay said damages or any part thereof.

ARTICLE VII.

Said Steamer "M. F. Henderson" is now within this district and within the jurisdiction of this court.

ARTICLE VIII.

All and singular the premises are true and within the jurisdiction of the United States, and of this Honorable Court.

WHEREFORE, claimant prays that said libel may be dismissed with costs and that claimant may have and recover of and from Shaver Transportation Company, libellant herein, and owner of the Steamer "M. F. Henderson" the sum of six hundred and four and 12/100 dollars to satisfy the claims of

claimant for damages with interest and costs, and that claimant may have such other or further relief as may be proper.

Proctors for claimant.

UNITED STATES OF AMERICA,

District of Oregon.—ss.

DANIEL KERN being first duly sworn says that he is the President of Columbia Contract Company, the claimant herein, and has read the foregoing answer and cross libel and knows the contents thereof and that the same is true as he verily believes.

DANIEL KERN.

Subscribed and sworn to before me this 22nd day of April, 1912.

W. A. JOHNSON,
Notary Public for Oregon, residing
at Portland, Oregon.

[Endorsed]: Answer. Filed Apr. 22, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 6 day of June, 1912, there was duly filed in said Court, a Supplemental Libel, in words and figures as follows, to wit:

[Supplemental Libel.]

*In the District Court of the United States
for the District of Oregon
in Admiralty.*

STEAMER "SAMSON," BARGE NO. 8, BARGE

NO. 9 and BARGE NO. 27,
COLUMBIA CONTRACT COMPANY, a corpora-
tion,

Claimant and Stipulator,
STANDARD OIL COMPANY, Incorporated Under
the Laws of the State of California, a corpora-
tion,

Respondent,
SHAVER TRANSPORTATION COMPANY, a
corporation,

Libellant.

To the Honorable Charles E. Wolverton, and the
Honorable Robert S. Bean, Judges of the above en-
titled Court:

By leave of Court first had and obtained, Shaver
Transportation Company, an Oregon corporation,
brings this its supplemental libel in a cause civil and
maritime in collision, against the Standard Oil Com-
pany Incorporated Under the Laws of the State of
California, a corporation, and articulately alleges
and propounds as follows:

ARTICLE I.

Libellant is and at all times herein mentioned was
a corporation organized and operating under the laws
of the State of Oregon, and had and has its principal
office in the City of Portland, State of Oregon, and
has and has paid all license fees by law required and
is qualified to sue in any court.

ARTICLE II.

The Standard Oil Company Incorporated Under

the Laws of the State of Oregon, is a corporation of the State of California, and will hereinafter be called the Standard Oil Company.

ARTICLE III.

The steamer "M. F. Henderson" at all times and to wit on July 22, 1911, was the property of the libellant, and was a steamer used in towing on the Columbia and Willamette Rivers, and was of the length of 158 feet, beam 31 feet, depth 7 feet 5 inches, and was, on said last named date, of the value of to wit fifty thousand dollars (\$50,000.00).

ARTICLE IV.

On to wit July 21, 1911, the Standard Oil Company requested the Oregon Round Lumber Company, a corporation of the State of Oregon, to procure and furnish a steam tug to act as the motive power in towing Oil Barge No. 93, the property of said Standard Oil Company, from Astoria, Oregon, to Portland, Oregon; in pursuance of which request Oregon Round Lumber Company on July 21, 1911, acting for said Standard Oil Company, requested the libellant to furnish a steamer to act as motive power only, for towing said Barge No. 93 from Astoria, Oregon, to Portland, Oregon.

ARTICLE V.

Pursuant to such request, the said Steamer "M. F. Henderson" was by libellant chartered to the said Standard Oil Company for the purpose aforesaid, to wit, to furnish motive power only, and was made fast to the said Oil Barge No. 93 on the port side of said

barge at to wit six o'clock P. M. on July 21, 1911, at Astoria, Oregon, and immediately thereafter proceeded on the voyage from Astoria, Oregon, to Portland, Oregon, wholly under the direction and under the control of the respondent, the Standard Oil Company. Said Barge No. 93 and the said "Henderson" as her motive power, as aforesaid, proceeded up the Columbia River without incident until to wit 1:30 A. M. of July 22, 1911. At this time the said "Henderson" and the said Oil Barge No. 93 were proceeding up the Columbia River at the rate of to wit three (3) knots per hour past the land, well under control, with all lights set and burning as required by law, to wit, a green side light on the starboard side of Oil Barge No. 93, a red side light on the port side of the "Henderson," and two white lights on the masthead of the "Henderson" and one white stem light on the "Henderson," all as required by law. The night was clear and dark, without haze or fog, and no moon. At the lower end of Puget Island, in the Columbia River, the pilot and lookout on the "M. F. Henderson" and Oil Barge No. 93 observed to wit two miles up the Columbia River, lights which afterwards proved to be the Steamer "Samson" with Barges No. 8, No. 9 and No. 27 in tow, all of which were and are the property of the claimant herein, Columbia Contract Company, an Oregon corporation. The "Samson" was running at to wit more than four (4) miles per hour past the land, and there was at this time a strong ebb tide, to wit a nine (9) foot tide of about half head.

The "Samson" was towing the barges aforesaid, as what is known as a spiked tow, to wit, Barge No. 8 was made fast to the starboard side of the "Samson," projecting forward beyond the "Samson;" Barge No. 9 was made fast to the port side of the "Samson," projecting forward equally with Barge No. 8; and Barge No. 27 was between them, projecting forward beyond both of them, the stern of the last named barge being in line with and close to the stem of the tow-boat "Samson." At this time the "Samson" and her tow showed Oil Barge No. 93 and the "Henderson" (proceeding as one vessel) her side lights and two masthead lights and one white light on the forward end of Barge No. 8 on the starboard side of the "Samson," but there was no light on Barge No. 9 on the port side, nor were any other lights displayed by the "Samson" or her tow. The "Samson" is 110 feet 4 inches in length, 25 feet 4 inches beam, 15 feet 6 inches deep, and her draft at this time was feet. Barges No. 8 and No. 9 are to wit 160 feet in length, 38 feet beam, 9 feet in depth, and at this time had a draft of feet. Barge No. 27 is 150 feet in length, 36 feet beam and 9 feet in depth, and had at this time a draft of feet. Oil Barge No. 93 is 300 feet in length, 34 feet beam, and at this time had a draft of $20\frac{1}{2}$ feet. The "Henderson" at this time had a draft of 5 feet. The channel in the Columbia River at and near the place hereinabove described, to wit between Puget Island and the Oregon shore, is to wit half a mile wide, and the channel for

vessels of the draft of the "Samson" and her tow is not less than 2500 feet wide; and Barge No. 93 and the "Henderson" (proceeding as one vessel) were, by their lights then set and burning as aforesaid, in clear view of the "Samson" for a distance of at least two miles, and for a time of at least minutes. When the "Samson" and her tow were to wit not less than half a mile from the "Henderson" and Oil Barge No. 93 (proceeding as one vessel, as aforesaid), said Barge No. 93 gave the signal to the "Samson" that the Oil Barge No. 93 with the "M. F. Henderson" as her motive power, would continue on the starboard side of the channel and pass to the port of the "Samson" to wit, gave one long blast of the whistle, which signal was promptly accepted and answered by the "Samson," to wit, by one blast of the whistle. Oil Barge No. 93 and the "Henderson" (proceeding as one vessel) were at this time near a point on the river known as Bugby's Hole, and were well on the starboard side of the channel toward the Oregon shore, and were then hauled and for a long time previous thereto had been hauled well inside the Hunting Island range lights so as to show to the "Samson" before any whistle blast was given, that Oil Barge No. 93 with the "Henderson" as her motive power, intended to keep to the starboard side of the channel and wished and intended to pass to the port of the "Samson." Notwithstanding such signal and its answer, the "Samson" did not effectively alter her course, and both her side lights remained visible

to Barge No. 93 and Oil Barge No. 93 continued to haul more and more toward the Oregon shore in order to avoid the "Samson" and pass to her port, as indicated; but the "Samson" continued to approach Barge No. 93 and the "Henderson" (proceeding as one vessel) and did not haul toward her own side of the channel, to wit toward the starboard side or the Puget Island side, and therefore Barge No. 93 gave a warning signal of her continued intention to pass to the port side of the "Samson" to wit another long blast of the whistle, and such signal was given when the "Samson" was well able to safely conform her course to such notice, to wit while the "Samson" was fully five minutes away; but the "Samson" did not alter her course, and Barge No. 93 and the Steamer "Henderson" as her motive power, both immediately put their helms hard aport and made for the Oregon shore, but too late to avert a collision. The "Samson" and her tow collided with the "M. F. Henderson" at to wit a point near the forward end of the freight house of the "Henderson" and crushed the hull and house of the "Henderson" so that she sank and became a total wreck. Barge No. 93 then immediately let go her anchor and came to rest to wit 300 feet from the Oregon shore and approximately near that point on the river designated as Bugby's Hole. The force and shock of the collision broke the lines by which the "Henderson" was made fast to Oil Barge No. 93, and the shock, together with the current of the river, carried the "Henderson" some distance, to wit

feet, below Oil Barge No. 93 at anchor, and the "Henderson" sank in feet of water and became a total wreck, as aforesaid, and a total loss, save and except for the salvage of certain machinery as hereinafter alleged.

ARTICLE VI.

Heretofore, to wit, April 22, 1912, Columbia Contract Company, the Claimant and Stipulator herein, filed its answer to the libel of the libellant herein, in and by which said claimant, Columbia Contract Company, alleged, among other things, as follows:

"At about the time last mentioned the steamer "Samson" and her tow were coming down the river, well under control, with all lights set and burning as required by law, to wit, two mast headlights, the side lights and the white lights on each outside barge, and as the "Samson" and her tow passed what is known as Bugby Light, to wit, about 1:30 A. M. of July 22, 1911, the Pilot and one of the sailors on board the "Samson" sighted what afterwards proved to be the Steamer "M. F. Henderson" with her tow, Oil Barge No. 93 about one mile away coming up the river. The "M. F. Henderson" and her tow first opened up her red light and then the green one, the Samson and her tow at this time being pretty well over to the Puget Island side or starboard side of the channel. As the Samson with her tow came a little closer the "M. F. Henderson" with her tow gave a signal to the "Samson" that the "M. F. Henderson" with her tow would pass to the port side of the "Samson" 'to wit, one long

blast of the whistle, and immediately the Samson accepted and answered said signal to wit, by one long blast of the whistle. Thereupon the "Samson" put her helm hard aport and the Samson and her tow kept swinging to the Puget Island side or starboard side of the channel. The "M. F. Henderson" and her tow were steering bad and would first open up her green light and then close it out again, and whilst the "Samson" had ported her helm in order to afford the "M. F. Henderson" and her tow plenty of room yet the "M. F. Henderson" with her tow kept heading right in to the "Samson." Orders had been given by the pilot of the "Samson" and obeyed at once to put the "Samson" hard aport, and about that time the "M. F. Henderson" gave a second signal by one big blast of the whistle which was the signal indicating her continued intention to pass to the port side of the "Samson," and which signal was immediately answered by the "Samson" by one long blast of the whistle. The Samson was at this time hard aport and immediately thereafter the Oil Barge No. 93 came close to the "Samson" and seemed to sheer off a little to the starboard side of the channel, and thereupon the "Samson" backed up wide open and while backing the Oil Barge struck the port scow, to wit, Barge No. 9, and about the same time struck the port barge, to wit, Barge No. 9, the Oil Barge the "M. F. Henderson" struck the said port barge to wit, Barge No. 9 with her stem and at or about the same time the forward barge to wit, Barge No. 27 struck the "M. F.

Henderson" at a point near the forward part of the freight house of the M. F. Henderson and the collision and subsequent sinking of the "M. F. Henderson" occurred."

ARTICLE VII.

If the aforesaid allegations of the said answer of the claimant and stipulator, Columbia Contract Company, shall by the evidence be proven true, then the sinking and loss of the Steamer "M. F. Henderson" was occasioned by the negligence of the Oil Barge No. 93, or the joint negligence of said Oil Barge No. 93 and the said Steamer "Samson," and in order to prevent a multiplicity of suits and to bring all parties interested or liable in this suit, libellant brings this its libel against said respondent The Standard Oil Company Incorporated Under the Laws of the State of California, and alleges that said Standard Oil Company is a joint tort feisor with and jointly concurred with the Steamer "Samson" in such negligence as caused the total wreck of the said Steamer "M. F. Henderson" as aforesaid.

ARTICLE VIII.

At the time of the said collision the Steamer "Henderson" had on her, not as a part of her required equipment, but additional to the said value of fifty thousand dollars (\$50,000.00) aforesaid, supplies and stores and articles of the value of fifteen hundred dollars (\$1,500.00), which were wholly lost by reason of said collision.

ARTICLE IX.

Libellant has expended in the raising of the said engines, after the said collision, and in the salvage of the "Henderson," the sum of to wit ten thousand dollars (\$10,000.00); and libellant has been and is damaged by reason of said collision, in addition to the other sums aforesaid, in the sum of ten thousand dollars (\$10,000.00).

ARTICLE X.

That by reason of the said expenditure, as aforesaid, salvage has been recovered of the value of to wit, sixteen thousand dollars (\$16,000.00).

ARTICLE XI.

That the total net damage sustained by the libellant by reason of said collision was and is the sum of to wit forty-five thousand five hundred dollars (\$45,500.00), with interest, no part of which said loss or damage has been paid to libellant by Oil Barge No. 93 or by the claimant, or by anyone.

ARTICLE XII.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

WHEREFORE, libellant prays that process in due form of law, according to the custom and practice in admiralty, may be issued against The Standard Oil Company Incorporated Under the Laws of the State of California, its officers and agents, warning and requiring it to appear and answer unto this libel; or, in default thereof, that a decree be taken against the

said The Standard Oil Company Incorporated Under the Laws of the State of California, for the relief prayed for in this supplemental libel; and libellant prays for such other and further and different process and relief as to this Court may seem meet and consonant with the customs and practice of courts of admiralty.

WILLIAMS, WOOD & LINTHICUM,
WOOD, MONTAGUE & HUNT,

Proctors for Libellant.

[Endorsed]: Supplemental Libel. Filed Jun. 6, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 29 day of June, 1912, there was duly filed in said Court, an Answer to Supplemental Libel in words and figures as follows, to wit:

[Answer of Claimant to Supplemental Libel.]

(Title.)

Columbia Contract Company, a corporation, claimant and stipulator, answering the Supplemental Libel of Shaver Transportation Company herein alleges:

FIRST.

The claimant admits the incorporation of the libellant and has no knowledge or information sufficient to form a belief as to the other allegations of the first article of said supplemental libel and therefore denies the same.

SECOND.

The claimant has no knowledge or information sufficient to form a belief as to the allegations of the second article of said supplemental libel and therefore denies the same.

THIRD.

The claimant has no knowledge or information sufficient to form a belief as to the allegations of the third article of said supplemental libel and therefore denies the same.

FOURTH.

The claimant has no knowledge or information sufficient to form a belief as to the allegations of the fourth article of said supplemental libel and therefore denies the same.

FIFTH.

Answering the allegations of the fifth article of said supplemental libel the claimant alleges:

The Steamer "Samson" with Barge No. 8 made fast to her starboard side, Barge No. 9 made fast to her port side and projecting forward equally with Barge No. 8 on the starboard side, and Barge No. 27 between Barges No. 8 and No. 9 and in line with the stem of the "Samson," all of said Barges being loaded with rock and being towed by the "Samson" as what is known as a spiked tow, on the 21st day of July, 1911, proceeded on a voyage down the Columbia River from Goble to the Columbia River Jetty without incident until about 1:30 A. M. of July 22, 1911.

At about the time last mentioned the steamer "Sam-

son" and her tow were coming down the river, well under control, with all lights set and burning as required by law, to-wit, two mast headlights, the side lights and the white lights on each outside barge, and as the "Samson" and her tow passed what is known as Bugby Light, to-wit, about 1:30 A. M. of July 22, 1911, the Pilot and one of the sailors on board the "Samson" sighted what afterwards proved to be the Steamer "M. F. Henderson" with her tow, Oil Barge No. 93 about one mile away and coming up the river. The "M. F. Henderson" and her tow first opened up her red light and then the green one, the "Samson" and her tow at this time being pretty well over to the Puget Island side or starboard side of the channel. As the "Samson" with her tow came a little closer the "M. F. Henderson" with her tow gave a signal to the "Samson" that the "M. F. Henderson" with her tow would pass to the port side of the "Samson," to-wit, one long blast of the whistle, and immediately the "Samson" accepted and answered said signal to-wit, by one long blast of the whistle. Thereupon, the "Samson" put her helm hard aport and the "Samson" and her tow kept swinging to the Puget Island side or starboard side of the channel. The "M. F. Henderson" and her tow were steering bad and would first open up her green light and then close it out again, and whilst the "Samson" had ported her helm in order to afford the "M. F. Henderson" and her tow plenty of room yet the "M. F. Henderson" with her tow kept heading right in to the "Samson." Orders

had been given by the pilot of the "Samson" and obeyed at once to put the "Samson" helm hard aport, and about that time the "M. F. Henderson" gave a second signal by one big blast of the whistle which was the signal indicating her continued intention to pass to the port side of the "Samson," and which signal was immediately answered by the "Samson" by one long blast of the whistle. The "Samson" was at this time hard aport and immediately thereafter the Oil Barge No. 93 came close to the "Samson" and seemed to sheer off a little to the starboard side of the channel, and thereupon the "Samson" backed up wide open and while backing the Oil Barge struck the port scow, to-wit, Barge No. 9, and about the same time struck the port barge, to-wit Barge No. 9, the Oil Barge the "M. F. Henderson" struck the said port barge to-wit, Barge No. 9 with her stem and at or about the same time the forward barge, to-wit, Barge No. 27 struck the "M. F. Henderson" at a point near the forward part of the freight house of the "M. F. Henderson" and the collision and subsequent sinking of the "M. F. Henderson" occurred.

The Claimant admits the allegations of the fourth article of said amended and supplemental libel giving the dimensions of the "M. F. Henderson" Oil Barge No. 93, the "Samson," Barge No. 8, Barge No. 9 and Barge No. 27 as being approximately true.

Further answering the allegations of the fourth article of said amended and supplemental libel, the claimant denies each and every other allegation of

said article not hereinbefore specifically admitted.

SIXTH.

The claimant admits the allegations of the sixth article of said supplemental libel and alleges that the facts as stated in its answer are true.

SEVENTH.

Answering the seventh allegation of said supplemental libel, claimant admits that the sinking and loss of the Steamer "M. F. Henderson" was occasioned by the negligence of Oil Barge No. 93, but denies that said loss and damage was occasioned by the joint negligence of the Steamer "Samson" and Oil Barge No. 93 and further denies that said collision and loss and damage was wholly, or in part, occasioned by the fault and negligence of the Steamer "Samson."

Further answering the seventh allegation of said supplemental libel, the claimant alleges that said collision and loss and damage was occasioned solely by the fault and negligence of the Steamer "M. F. Henderson" and of her tow, Oil Barge No. 93.

EIGHTH.

The claimant has no knowledge or information sufficient to form a belief as to the allegations of the eighth article of said supplemental libel and therefore denies the same.

NINTH.

Claimant has no knowledge or information sufficient to form a belief as to the allegations of the ninth article of said supplemental libel and therefore denies the same.

TENTH.

Claimant has no knowledge or information sufficient to form a belief as to the allegations of the tenth article of said supplemental libel and therefore denies the same.

ELEVENTH.

Claimant has no knowledge or information sufficient to form a belief as to the allegations of the eleventh article of said supplemental libel and therefore denies the same.

TWELFTH.

Claimant denies the allegations of the twelfth article of said supplemental libel.

Claimant further answering said supplemental libel, and by way of a cross-libel, alleges:

ARTICLE I.

Claimant is and was at all times herein mentioned a corporation organized and operating under the laws of the State of Oregon, and has its principal office in the City of Portland, State of Oregon, and has paid the license fees by law required and is qualified to sue in any court.

ARTICLE II.

The Steamer "Samson," Barge No. 8, Barge No. 9 and Barge No. 27 at all times and to wit, on July 22, 1911, were the property of the claimant and were used on the Columbia and Willamette Rivers.

ARTICLE III.

The Steamer "Samson" with Barge No. 8 made fast to her starboard side, Barge No. 9 made fast to her

port side and projecting forward equally with Barge No. 8 on the starboard side, and Barge No. 27 between Barges No. 8 and No. 9 and in line with the stem of the "Samson," all of said barges being loaded with rock and being towed by the "Samson" as what is known as a spiked tow, on the 21st day of July, 1911, proceeded on a voyage down the Columbia River from below Goble to the Columbia River Jetty without incident until about 1:30 A. M. of July 22, 1911.

At about the time last mentioned the steamer "Samson" and her tow were coming down the river, well under control, with all lights set and burning as required by law, to-wit, two mast headlights, the side lights and the white lights on each outside barge, and as the "Samson" and her tow passed what is known as Bugby's Light, to-wit, about 1:30 A. M. of July 22, 1911, the Pilot and one of the sailors on board the "Samson" sighted what afterwards proved to be the Steamer "M. F. Henderson" with her tow, Oil Barge No. 93 about one mile away coming up the river. The "M. F. Henderson" and her tow first opened up her red light and then the green one, the "Samson" and her tow at this time being pretty well over to the Puget Island side or starboard side of the channel. As the "Samson" with her tow came a little closer the "M. F. Henderson" with her tow gave a signal to the "Samson" that the "M. F. Henderson" with her tow would pass to the port side of the "Samson" to-wit, one long blast of the whistle, and immediately the "Samson" accepted and answered said

signal, to-wit, by one long blast of the whistle. Thereupon, the "Samson" put her helm hard aport and the "Samson" and her tow kept swinging to the Puget Island side or starboard side of the channel. The "M. F. Henderson" and her tow were steering bad and would first open up her green light and then close it out again, and whilst the "Samson" had ported her helm in order to afford the "M. F. Henderson" and her tow plenty of room yet the "M. F. Henderson" with her tow kept heading right in to the "Samson". Orders had been given by the pilot of the "Samson" and obeyed at once to put the "Samson" helm hard aport, and about that time the "M. F. Henderson" gave a second signal by one big blast of the whistle which was the signal indicating her continued intention to pass to the port side of the "Samson," and which signal was immediately answered by the "Samson" by one long blast of the whistle. The "Samson" was at this time hard aport and immediately thereafter the Oil Barge No. 93 came close to the "Samson" and seemed to sheer off a little to the starboard side of the channel, and thereupon the "Samson" backed up wide open and while backing the Oil Barge struck the port scow, to-wit, Barge No. 9 and about the same time struck the port Barge, to-wit, Barge No. 9, the Oil Barge the "M. F. Henderson" struck the said port barge to-wit, Barge No. 9 with her stem and at or about the same time the forward barge to-wit, Barge No. 27 struck the "M. F. Henderson" at a point near

the forward part of the freight house of the "M. F. Henderson" and the collision and subsequent sinking of the "M. F. Henderson" occurred.

ARTICLE IV.

Said collision was not caused or contributed to by any negligence on the part of the claimant or of those in charge of said Steamer "Samson," Barge No. 8, Barge No. 9 and Barge No. 27, but was caused wholly by the fault and negligence of the Steamer M. F. Henderson," and her tow.

ARTICLE V.

By reason of said collision the claimant was damaged in the sum of \$604.12, to-wit:

Loss of one day's use of the Steamer "Samson" and the cost of operation	\$133.50
Loss of one day's use of the Steamer "Hercules" (which was making a joint trip in connection with the "Samson," and the cost of operation	111.00
Loss of one day's use of six barges at \$15.00 per day and loss of one day's use of three barges at \$12.00 per day	126.00
Amount paid for repairs to barges necessitated by reason of said collision	188.62
Loss of use of said barges while being repaired	45.00

ARTICLE VI.

No part of said loss and damage has been paid to claimant and the Steamer "M. F. Henderson," Oil Barge No. 93 and Standard Oil Company incorporated under the laws of the State of California and libel-

lant herein Shaver Transportation Company refuse to pay said damage or any part thereof.

ARTICLE VII.

Said Steamer "M. F. Henderson" is now within this district and within the jurisdiction of this court.

ARTICLE VIII.

All and singular the premises are true and within the jurisdiction of the United States, and of this Honorable Court.

WHEREFORE, claimant prays that said libel may be dismissed with costs and that claimant may have and recover of and from Shaver Transportation Company, libellant herein, and owner of the Steamer "M. F. Henderson" or from the Standard Oil Company incorporated under the laws of the State of California and owner of Oil Barge No. 93, or against Shaver Transportation Company and the said Standard Oil Company incorporated under the laws of the State of California, the sum of six hundred and four and 12/100 dollars to satisfy the claims of claimant for damages with interest and costs, and that claimant may have such other and further relief as may be proper.

TEAL, MINOR & WINFREE,

Proctors for claimant.

[Endorsed]: Answer to Supplemental Libel.
Filed Jun. 29, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 27 day of August, 1912, there was duly filed in said Court, Answer of Respondent to Supplemental Libel, in words and figures as follows, to wit:

[Answer of Respondent to Supplemental Libel.]

(Title.)

No. 5420.

Answer of Respondent Standard Oil Company Incorporated Under the Laws of the State of California to the Supplemental Libel filed against it in personam by Shaver Transportation.

This respondent, Standard Oil Company Incorporated Under the Laws of the State of California, a corporation, brings this its answer to the supplemental libel exhibited in this cause in personam against this respondent, and for answer shows and alleges to the court as follows:

ARTICLE I.

This respondent believes it to be true that the libellant herein is incorporated as in the supplemental libel set forth and has its principal office as stated in said libel.

ARTICLE II.

This respondent, Standard Oil Company Incorporated Under the Laws of the State of California, is a corporation, as stated in the supplemental libel, though it is mis-described therein as incorporated under the laws of the State of Oregon, this respondent being in fact incorporated under the laws of the State of California.

ARTICLE III.

Respondent admits that the Steamer "F. M. Henderson" in all times as in the supplemental libel stated was the property of the libelant and was a steamer sometimes used in towing on the Columbia and Willamette Rivers, but this respondent does not know its length, beam, or depth, concerning which the respondent leaves proof thereof to libelant as the libelant may be advised, but this respondent denies that at the time of the accident and injury to the Steamer "Henderson" as in the libel set forth the Steamer "Henderson" was worth fifty thousand dollars or any value exceeding the sum of twenty-five thousand dollars.

ARTICLE IV.

Touching and concerning the allegations in Article IV. of the supplemental libel of the libelant, this respondent says the true facts touching and concerning the request alleged to have been made by this respondent upon the Oregon Round Lumber Company to procure and furnish a steam tug to tow Oil Barge 93 from Astoria, Oregon, to Portland, are as follows: On to wit, July 21, 1911, this respondent had an agreement with the Oregon Round Lumber Company, a corporation, for the towing of all vessels which might be owned by this respondent and the towing of which might be required by this respondent and which were plying between Astoria, Oregon, and Portland, Oregon, and on to wit, July 21, 1911, this respondent, then having its Oil Barge 93 in the port of Astoria bound for Portland, Oregon, there to discharge a certain

cargo of oil with which the said Oil Barge 93 was loaded, requested said Oregon Round Lumber Company to furnish a tug under the contract of said Oregon Round Lumber Company with this respondent to tow this respondent's said Barge from Astoria to Portland, aforesaid, pursuant to which request the said Oregon Round Lumber Company on towit, July 21, 1911, furnished to this respondent the Steamer "F. M. Henderson," the owner of which steamer by libelant was unknown to this respondent; thereupon, the said "Henderson" took in tow said Barge 93 of this respondent and undertook to safely tow said Barge from Astoria to Portland.

Except as to the facts herein set forth, this respondent denies the allegations of Article IV. of the supplemental libel of the libelant, and particularly that the Oregon Round Lumber Company, acting for this respondent, requested the libelant to furnish the said Steamer the "Henderson" to tow said Barge 93.

ARTICLE V.

This defendant denies that, except as stated in Article IV. of its answer herein, said Steamer "Henderson" was chartered by this respondent, or that the libelant chartered the said vessel to this respondent to furnish motive power, only, or that it was chartered at all except as stated in Article IV. of this answer. But this respondent admits that the said "Henderson" was made fast to said Oil Barge 93 on the port side thereof early in the evening of July 21, 1911, and thereupon and thereafter, and almost im-

mediately, the said Steamer "Henderson" proceeded on her voyage from Astoria, Oregon, to Portland, Oregon, with said Barge 93 in tow and for ultimate delivery to this respondent at Portland, Oregon, and while she was so proceeding, this respondent, pursuant to negotiations which had been had theretofore with the Columbia River Pilots Association, had on board of the said Barge 93 to generally pilot the said Barge and the tug towing the same up said River, and while the said passage was being made, and up to the time of the collision in the said supplemental libel referred to, the pilot in charge of said Barge, who had general supervision of said Barge, gave to the master of said tug "Henderson" general instructions touching the movements of the said vessels. But this respondent denies that said passage was undertaken wholly under the direction or control of this respondent, but alleges the fact to be that both the master of the said tug "Henderson" and the said pilot had charge of the movements of the said vessels. That the said "Henderson" at the time of being furnished as aforesaid was supplied with a master whom this respondent believed to be competent and with a full complement of a crew. And it is true, as in the said Article V. alleged, that while passing up the River and at the time of the collision complained of, said "Henderson" and said Oil Barge 93 were proceeding up the Columbia River at the rate of about three knots per hour; that they were well under control, with all lights set and burning as required by law; that the

night was clear. While the said vessels were proceeding up the said River, and at or in the neighborhood of Puget Island in the Columbia River, the pilot and lookout on the said "Henderson" and Oil Barge 93 observed to-wit, approximately two miles up the Columbia River, lights which afterwards proved to be lights of the Steamer "Samson" with Barges No. 8, No. 9 and No. 27 in tow, which said Steamer "Samson" and her said Barges were then the property, as this respondent believes, of the claimant herein, Columbia Contract Company, an Oregon corporation, said "Samson" running at to-wit, more than five miles per hour past the land, and there was at this time a strong ebb tide, though the amount thereof this respondent does not know. The said "Samson" was towing the Barges to which she was fastened, to-wit, Barges No. 8, No. 9, and No. 27, in what is known as a "spiked tow," to-wit, Barge No. 8 was made fast to the starboard side of the "Samson" projecting forward beyond the "Samson;" Barge No. 9 was made fast to the port side of the "Samson" projecting forward approximately equal with Barge No. 8, and Barge No. 27 was between the two said Barges, projecting forward beyond both of them, the stern of the last-named Barge being in line with and close to the stem of the "Samson." At this time the said "Samson" and her tows showed to Oil Barge No. 93 and the "Henderson" proceeding as one vessel, the two side-lights of her, the said "Samson" and two mast-head lights and one white light on the forward

end of Barge No. 8 and the forward side of said Steamer "Samson," but there was no light on Barge No. 9, nor was there any other light visible by the said "Samson" or her tows. The said "Samson" is 110 feet 4 inches in length and some 25 feet 4 inches beam; and about 15 feet 6 inches deep. Barges No. 8 and 9 are to-wit, approximately 160 feet in length, and about 38 feet beam, and 9 feet in depth. Barge No. 27 was approximately 150 feet in length, 36 feet beam, and about 9 feet in depth. This respondent cannot say what draught of water the said Samson and her Barges were drawing. Oil Barge No. 93 and the "Henderson" proceeding up the River as one vessel were by their lights then set and burning as aforesaid in clear view of the "Samson" and her tows and for a distance of at least two miles, and when the said "Samson" and her tows were, to-wit, not less than a half to three-quarters of a mile distant from the said "Henderson" and "Oil Barge 93, said Barge 93, by direction of the pilot in general charge of the navigation of said Barge and her tug, gave the signal to the "Samson" that the said Barge and her said tug the "Henderson" would continue on up the River and pass to the port side of the said "Samson," giving one long blast of the whistle for that purpose, and which was designed to convey the meaning aforesaid, and thereupon, the said signal was promptly accepted in answer to the said "Samson" by one long blast of her whistle. Said Oil Barge 93 and her said tug the "Henderson" were at this time near to a point on

the River known as "Bugby's Hole" and were well on the starboard side of the River, coming up the River, and were well on the starboard side of the channel and toward the Oregon shore, and were then hauled, and for a long time previous thereto had been hauled, well inside the Hunting Island Range Lights so as to show the "Samson" before any whistle blast was given that Oil Barge 93, with her said tug, the "Henderson," intended to keep the starboard side of the River and wished and intended to pass the port side of the "Samson." Notwithstanding such signal and its answer, the said "Samson" did not effectively alter her course, and both her side lights remained visible to Barge 93, whereupon the said Barge continued to port her helm and the said Barge and her said tug continued to haul more and more toward the Oregon shore in order to avoid the "Samson" and pass to her port as intended, but the "Samson" continued to approach Barge 93 and the "Henderson" did not haul to her own side of the channel, and thereupon, Barge 93 gave a warning signal of the continued intention of said Barge and her said tug the "Henderson" to pass to the port side of the "Samson" by giving another long blast of the whistle, and such signal was given at a time when the said "Samson" was well able to safely conform her course to such notice, but the "Samson" did not alter her course and Barge 93 and her said Steamer "Henderson" both immediately put their helms hard aport and made for the Oregon shore, but too late to avert a collision.

The "Samson" and her tow collided with the said "Henderson" at to-wit, near the forward end of the freight house of the "Henderson" and crushed the hull to some extent of the said "Henderson" and her house, so that the said "Henderson" sank, but she did not become a total loss, for that she was afterwards raised and a considerable salvage realized. Said Barge 93 then immediately let go her anchor and came to rest, to-wit, about 300 feet from the Oregon shore and not far from that point on the River designated as "Bugby's Hole." The force and shock of the collision broke the lines by which Barge 93 was made fast to the said "Henderson" and the shock, together with the current of the River, carried the "Henderson" some distance down the River below Oil Barge 93, where the "Henderson" sank, though it is not true, as alleged in Article V. of the supplemental libel that the said "Henderson" became or was a total loss.

So that, as this respondent alleges, in respect to all of the allegations contained in Article V. of the supplemental libel, that the allegations thereof are substantially true, being true as herein alleged, and not otherwise. But the responsibility for the said collision, as charged in the said supplemental libel, rested with the said steam tug "Samson" and her said tows, and the said tug "Samson" disregarding the signals which had been given to her, and by negligent and careless management causing the damage of the said libelant complained of. That the Barges of the said

tug "Samson" and to which the said "Samson" was fastened, were heavily laden rock barges, each barge containing approximately one thousand tons of rock, which said rock was being towed by the said tug "Samson" to the mouth of the Columbia River for use in connection with some jetty work then being carried on.

ARTICLE VI.

Respondent admits that heretofore and about April 22nd, 1912, and after the libelant herein had filed its libel in rem against said tug "Samson" and her Barges, charging the specific acts of negligence hereinbefore referred to, the Columbia Contract Company, a corporation of the State of Oregon, having theretofore filed its claim to the said "Samson" and her said Barges, filed its answer to the libel of the libelant, which had theretofore been filed, and in and by which said answer said claimant, Columbia Contract Company alleged, among other things, the facts and circumstances set forth and charged to have been alleged in said answer in Article VI. of the supplemental libel of the libelant herein filed against this respondent, all of which allegations, however, are in fact untrue, as charged in the libel of the libelant filed herein and against this respondent. But in respect to the charges set forth in Article VII. of said supplemental libel, this respondent denies that if the allegations in the said answer of the said claimant and stipulator, Columbia Contract Company, shall by the evidence be proven true, then the sinking and loss of

the Steamer "Henderson" was occasioned either by the negligence of Oil Barge 93 or the joint negligence of the said Oil Barge 93 and the said Steamer "Samson," for that, as this respondent now alleges, under the contract between this respondent and said Oregon Round Lumber Company and under the terms by which the said Steamer "Henderson" was furnished to this respondent for the towing of its said Barge 93, this respondent became, at most, a bailee as to the said libellant herein, and its said vessel, the "Henderson," and became and was such bailee for hire, and the advantages from such bailment were mutual, i. e., this respondent availed itself of the said "Henderson" for the towing aforesaid and the hire for the use of said steamer was paid to the Oregon Round Lumber Company in accord and with the contract between that company and this respondent, and in the manipulation and management of the said Barge 93 and the general directions given in the movement of the said Barge and the said "Henderson" by the pilot in charge of the navigation of the said Barge 93 and the said "Henderson," said pilot, who is a public licensed state officer, exercised reasonable, sound judgment and discretion in the course of and in connection with the said voyage, and exercised ordinary care and diligence in respect thereto, and if any injury occurred to the said "Henderson" and for which the said "Samson" and her Barges are not responsible, the injury was one for which this respondent is not responsible.

While this respondent admits that the said supplemental libel, as charged in Article VII thereof, is filed in order to prevent a multiplicity of suits and to bring all persons interested into the libel proceedings by the libelant first inaugurated against the said "Samson" and her Barges, it is not admitted by this respondent that by the supplemental libel filed herein a multiplicity of suits will be avoided, or that by the supplemental libel herein it is competent on the part of the libelant under the Admiralty Procedure laid down and determined to bring this respondent by the service of the supplemental libel herein upon this respondent in personam into the case so by the libelant begun originally against the "Samson" in rem, but all such efforts on the part of the libelant in this proceeding are without authority of law, and this respondent denies that it is or at any time was a joint tort feasor with, or jointly concurred with, the Steamer "Samson" in the negligence causing the wreck of the said Steamer "Henderson," and the respondent now prays for such relief as might be awarded to this respondent had this respondent excepted to the said libel for such misjoinder. And this respondent now alleges that this respondent cannot be held to answer in this proceeding without some specific act of negligence, with which the said respondent is in no way charged by the supplemental libel herein.

ARTICLE VII.

Answering Article VIII. of the supplemental libel, this respondent denies all knowledge and informa-

tion sufficient to form a belief as to whether or not at the time of the collision the Steamer "Henderson" had on her supplies, stores and articles of the value of fifteen hundred dollars, or of any value, and which cargoes were wholly lost by reason of the said collision; but the libelant admits that there were some stores and supplies not necessary as a part of her required equipment and which were on the vessel at the time of the collision and which may probably have been lost, but the respondent leaves to the libelant the proof as to all such matters, for this respondent now charges that if there were any such supplies, articles and stores not necessary as a part of her required equipment, then the libelant cannot recover for the same or for any part thereof.

ARTICLE VIII.

Answering Article IX. of the supplemental libel, this respondent denies all knowledge or information sufficient to form a belief as to the amount alleged by the libelant to have been expended in the raising of the engines after the collision and in the salvage of the said "Henderson," and respondent leaves to libelant proof as to such matters as the libelant may be advised may be necessary.

ARTICLE IX.

Answering Article X. of the supplemental libel, this respondent denies all knowledge or information sufficient to form a belief as to whether salvage has been recovered from the said "Henderson" in the sum of sixteen thousand dollars, or any other sum. What-

ever sum has been so secured must be credited by the said "Henderson" and libelant, the owners thereof, against the libelant's claim for damage by reason of the collision.

ARTICLE X.

Answering Article XI. of the supplemental libel, this respondent denies that the net damage sustained by the libelant by reason of the collision was and is the sum of, to-wit, \$45,500, with interest, or any other sum exceeding the sum of \$16,000, for that, as heretofore in this answer set forth, said "Henderson" was not at the time of the said collision of the value of \$50,000, nor did she have any value exceeding the value of \$25,000. That the said "Henderson" was subsequently raised by the said libelant and brought to the City of Portland. That she was about from ten to fifteen years of age prior to the time of the collision, and while her value may have been in excess of \$25,000 when she was first constructed, her value did not exceed at the time of the collision the sum of \$25,000. Large amounts of her machinery were salvaged. And whereas, the owners of the said "Henderson" claimed to have recovered by way of salvage of the said vessel the sum of \$16,000, after an alleged expense of \$10,000 to secure the said salvage, as a matter of fact the said vessel could have been repaired and the said vessel restored to as good a condition as before the collision by an expenditure of the sum of from \$14,000 to \$16,000. So that, as this respondent now avers, damage to the libelant by reason of the

collision did not exceed from \$14,000 to \$16,000. But this respondent admits that no part of any damage which may have been sustained by the "Henderson" has ever been paid by this respondent.

That all and singular the premises herein stated are true.

Wherefore, this respondent, having now fully answered the supplemental libel of the libelant filed herein, prays to be hence dismissed, with the costs and disbursements by the respondent incurred in this proceeding.

ZERA SNOW,
WALLACE McCAMANT,
GEO. B. GUTHRIE,

Proctors for Respondent.

[Endorsed]: Answer of Standard Oil Company to Supplemental Libel. Filed Aug. 27, 1912.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 29 day of September, 1913, there was duly filed in said Court, an Opinion, in words and figures as follows, to wit:

[Opinion on the Merits.]

(Title.)

CUSHMAN, District Judge.

Claimant relies on the following authorities:—

The Merchant Prince, Law Rpts. (1892).

1 Prob. Div. 179, in Court of App., 1892;

The Olympia, 61 Fed. R., 120,

- C. C. A., 6th Cir., 1894;
The F. W. Wheeler, 78 Fed. R. 824,
C. C. A., 6th Cir., 1897;
The Ohio, 91 Fed., 547; C. C. A., 6th Cir. 1898;
The Fontana, 119 Fed., 853; C. C. A., 6th C.,
1903.
The Edmund Moran, 180 Fed., 700;
C. C. A., 2nd Cir., 1910;
Nicholas Transit Co. v. Pittsburgh S. S. Co.,
196 Fed., 65; Dis. Ct., W. D. N. Y., 1912;
The Lackawanna, 201 Fed., 773;
Dist. Ct., W. D. N. Y., 1913;
Union S. S. Co. v. N. Y. & Va. S. S. Co.,
65 U. S. (24 How.) 307; 16 L. C. P. Co. Ed.,
699; U. S. Sup. Ct., 1861;
The Bywell Castle, Law Rpts., 4 Prob. Div.,
219, in the Court of Appeal, 1878;
The Maggie J. Smith, 123 U. S., 349;
31 L. C. P. Co., Ed., 175;
U. S. Sup. Ct., 1897;
The Phoenix, 50 Fed., 330; Dist. Ct.,
S. D. N. Y., 1892;
The Lake Shore, 201 Fed., 449;
Dist. Ct., N. D. Ohio, 1912;
The Centurion, 100 Fed. R., 663;
C. C. A., 6th Cir., 1900;
The Maria Martin v. Northern Trans. Co.,
79 U. S. (12 Wall.), 31; 20 L. C. P. Co. Ed.,
251; U. S. Sup. Ct., 1871;
The Columbia, 23 Blatchf., 268;

- C. C. E. D. N. Y., 1885;
W. Va. Central & P. Ry. Co. v. The Isle of
Pines, et al., 24 Fed., 498; Dist. Ct.
S. D. N. Y., 1885;
The A. W. Thompson, 39 Fed., 115;
Dist. Ct., S. D. N. Y., 1889;
The Louise, 52 Fed., 885; C. C. A. 4th Circuit,
1892;
The Lisbonense, 53 Fed. R., 293;
C. C. A. end Cir., 1892;
The George W. Childs, 67 Fed., 269;
Dist. Ct. E. D. Pa., 1895;
The Victory, 68 Fed., 395;
C. C. A. 4th Cir., 1895;
The Maryland, 182 Fed., 829;
Dist. Ct. E. D. Va., 1910;
The Laura Lee, 24 Fed., 483;
Dis. Ct., E. D. La., 1885;
The City of Alexandria, 40 Fed. 697;
Dist. Ct. S. D. N. Y., 1889;
The Havilah, 50 Fed., 331;
C. C. A., 2nd Cir., 1892;
La Normandie, 58 Fed., 427;
C. C. A. 2nd Cir., 1893;
The James Gray v. The John Fraser,
62 U. S. (21 How.) 184, 16 L. C. P. Co.,
Ed. 106; U. S. Sup. Ct., 1859;
The Sturgis v. Boyer, 65 U. S. (24 How.),
110; 16 L. C. P. Co. Ed., 591; U. S.
Sup. Ct. 1860;

The *J. H. Gautier* and the *Herbert Manton*,
5 Benedict, 469; Dist. Ct., S. D. N. Y., 1872;
Affirmed 14 Blatchf., 37, C. C. S. D. N. Y., 1876;
The *John Cooker* and the *James W. Eaton*,
10 Benedict, 488; 13 Fed. Cases, 665,
(Fed. Case No. 7337), Dist. Ct. E. D. N. Y.,
1879;

The *Doris Eckhoff*, 32 Fed., 555;
Dist. Ct. S. D. N. Y., 1887.

The *Umbria*, 166 U. S., 404; 41 L. C. P. Co.
Ed. 1053; U. S. Sup. Ct., 1897;

This question was before the court on the question of the right of libellant to maintain a suit for collision in rem against one of the vessels and in personam against the owner of another, charged to be involved in the collision. (The "*Samson*," 197 Fed., 1017). The cause is now for decision, after evidence taken, and is brought to recover for the wreck of the Steamer "*Henderson*," in a collision with the tow of the tug "*Samson*," the collision occurring on the Columbia River between Astoria and Portland. The suit is in rem, against the "*Samson*" and the three barges forming her tow, and in personam against the Standard Oil Company, the owner of the oil barge being towed by the "*Henderson*" at the time she was struck.

The collision took place between 1:30 and 2:00 A. M., July 22, 1911, in the main channel of the Columbia River, between Puget Island and the Oregon shore, near Bugby's Hole, during the flood season on the river, with a nine-foot tide at half ebb. The night

was dark, but clear, with no moon.

The "Henderson," a stern wheel steamer, 158 feet long, with a 31-foot beam, was coming up stream, lashed to the port quarter of her tow, overlapping the stern of her tow some hundred feet, and with her bow turned slightly in towards the tow. The oil barge was without propelling power of her own.

The tug "Samson"—110 feet long—was going down stream with a tow of three scows, each about 150 feet long, 36-foot beam, and each loaded with about a thousand tons of rock. Her scows were arranged in what is known as a "spike" tow, one scow on her port quarter; another on her starboard-quarter and the third between the other two, projecting in front of them some fifty feet, and immediately ahead of the "Samson", the port and starboard scows flaring from the center scow, making a flotilla, in general outline, not unlike the "club" upon a playing card.

The collision occurred upon the upper "reach" of an approximately straight stretch of channel, some three or more miles long. This stretch of channel was marked with certain range lights—two at the foot, on the Washington side, and one at the head of it, upon the Oregon shore—and is known as the "Hunting Island Range."

At the place of the collision, the channel was about twenty-five hundred feet wide. The "Henderson" and her tow met and passed, to starboard, of the Steamer "Kern" about two miles below the point of collision. The "Samson" rounded the point of Puget

Island over a mile above the point of collision, thus coming into view from the Washington side of the river.

After sighting the "Samson," while two miles apart, the oil barge, whose captain was directing her towing, whistled once, when the vessels were about a half mile apart, thus signalling passage port to port, or on the Oregon side of the "Samson." The "Samson" answered promptly, accepting the signal. Both sets of vessels were properly equipped with lights.

From this point the testimony is conflicting and cannot be reconciled. The captain of the oil barge, considering the "Samson" was not complying with the signal with sufficient promptness, repeated it when the vessels were about five hundred feet apart.

The situation, as stated, discloses that the point of collision, with reference to the width of the channel, is the controlling factor in determining who was responsible for the collision. For the libelant it is contended that this point was to the Oregon side of the range marks, and by the claimant that it was on the Puget Island side.

Much testimony has been introduced concerning the maneuvering of the vessels immediately preceding the collision; how the lights appeared from one upon the other, and the subsequent signals given by the boats as well as the handling of helms just before the collision. But none of it is of a character to shift, or divide the responsibility for the relative position of the vessels, with reference to the marked channel,

after the giving of the first signal and its acceptance in ample time and with ample room to have avoided the collision, with the vessels involved under control.

It is probable that it was the port stone barge which struck and crushed the "Henderson's" port bow, a hole being made in her bow about fourteen feet across, and beginning about thirty-five feet back from her stem.

That the "Henderson" was not struck further aft by the center stone barge is probably explained by the flare of the stone barges, the exact extent of which cannot be known, but, whether the "Henderson" was struck by the center scow, or the port scow is deemed unimportant, for the angle of the courses of the encountering vessels would have been substantially the same in either case.

The "Henderson" when cut away and free from the oil barge, sank almost immediately and, without any control of her movements, drifted down stream. The oil barge dropped her anchors. The "Samson" carried her tow astern of the oil barge, after the collision; got the lines off the stone barges and anchored them.

There is a great deal of conflict in the testimony of the witnesses upon the vessels concerned about how long a time elapsed after the collision before the oil barge dropped her anchors. Libelant contends that they were dropped immediately. The witnesses of libelant on the "Henderson" and oil barge are cor-

roborated on this point, and that of the place of collision by a number of drift net fishermen, who were on the river, a short distance below the collision. These fishermen, in putting out their drift nets, used the range lights primarily marking the channel for the benefit of vessels.

The oil barge, when anchored, was within a short distance of the Oregon shore, with no more room than was required to swing at anchor. Claimant undertakes to account for her position upon the theory that she had such headway as to carry her up stream, across the range and over to the Oregon shore. The fact that she was only making three miles an hour at the time of the collision, coupled with the further facts that it was ebb tide, with a strong current; that the "Henderson" had been backing full speed astern for half a minute before the collision; that the force of the collision was such as to break the five heavy lines fastening the "Henderson" to the oil barge renders it improbable that she would go a quarter of the distance from the range to the Oregon shore, even without dragging her anchors, whereas she was anchored three quarters of the way in from the range towards that shore.

This was an old and good anchorage ground. It is unlikely that the anchors dragged. The evidence shows that they were dropped in not to exceed thirty seconds after the collision,—one anchor weighing seven thousand pounds, and the other sixty-three hundred pounds.

The stone barges were anchored to the Oregon side of but near the range. These stone barges were evidently carried thus far towards Puget Island after the collision, before the lines of the "Samson" were gotten off them, then drifted down the channel to the point of anchorage.

The momentum of the stone barges, going down the river at six or seven miles an hour, with a favorable current would, naturally, carry them further towards the Washington shore than the oil barge would go towards the Oregon shore, traveling at the rate of three or four miles per hour, when struck, with an adverse current.

That the point of collision was well to the Oregon side of the channel is still further shown by the point to which the "Henderson" drifted. While it cannot be determined how great was the momentum of the oil barge or the stone scows; nor how far across the stream they would be carried by it, the crushing and immediate sinking of the "Henderson," left it inert to be carried by the current, uninfluenced by any other force. It drifted and lodged in the shoals on the shore of Tenas Illihee Island, which was upon the Oregon shore of the main channel of the river, about thirty-five hundred feet below the point of collision.

The testimony of those aboard shows that the "Henderson" bumped on the bottom as she drifted, which could only have been upon the shoals to the Oregon side. Claimant seeks to explain the position in which the "Henderson" was left by contending that

she was drawn towards the Oregon side of the river by the waters of Clifton Channel, which separates Tenas Illihee Island from the main Oregon shore. The deepest parts of this channel are twelve to fifteen feet—not one-third the depth of the main channel, and could have had no appreciable effect upon the “Henderson,” unless she was well in towards the Oregon side when she was struck.

After anchoring her barges, the “Samson” and one of her boats went to the “Henderson” and shoved and pulled her upon the shoals of Tenas Illihee Island. The Captain of the “Samson” testified that, in going to the relief of the “Henderson,” he crossed the range. Therefore, it is clear that the “Henderson” could not have been on the Washington side, while the “Samson,” through her movement and that of her stone barges, subsequent to the collision, might have been.

It is contended by claimant that it is by this action on the part of the “Samson” in towing and shoving the “Henderson” that she was gotten over to the Oregon side of the river. But it cannot thus be accounted for. The “Henderson” would not drift across the main current and, if in the center of the main current of the river, marked by the range lights, she would have drifted further down in the time required by the “Samson” to get her lines off her tows, anchor them and go to the “Henderson.” If the “Samson” had found her upon the Washington side of the channel, she would, probably, have towed her to that shore, and not to the Oregon side, across the deep channel,

taking the chances of her sinking.

It is clear that the fault was with the "Samson." The failure of the oil barge, or the "Henderson," to give a danger signal, as provided by Rule I., prescribed for pilots in inland water, and the repeating of the oil barge's first signal are not shown, by the evidence, to have helped to cause the collision.

The pilot of the "Samson" understood the first signal and had his tow under control. If it was unwieldy, he should have known it and acted in time. The giving of a danger signal would not, in any event, have avoided the collision, because it would not have helped him control his tow, if unwieldy.

Having concluded that the sole fault was that of the "Samson," the supplemental libel against the Standard Oil Company, the owner of the oil barge, whose captain was in charge of her towing up the river, will be dismissed. The relief asked by the answer, in the nature of a cross-libel against libelant and the respondent, Standard Oil Company, is also dismissed for the same reason.

It has already been held herein that the three stone barges would be responsible with the "Samson" for any damage from the latter's fault. (The John Cooker, Fed. Case No. 7337). In view of the fact that the "Samson" and the stone barges were both owned and claimed by the present claimant, taken in connection with other circumstances of the case, the court must adhere to the former ruling.

The "Henderson" was raised; brought into the dry

dock and practically rebuilt. There was salvage of a portion of her machinery. Therefore, the value of the "Henderson," less the net salvage, is the measure of libellant's damage.

There is a wide range in the testimony as to the value of the "Henderson," the amounts varying from \$20,000 to \$45,000, in the opinion of the different witnesses. The evidence shows that, at the time of the wreck, the "Henderson" was ten years old and in good condition. There is evidence by her builder that the "Henderson" and her equipment cost upwards to \$51,000; that, in 1911, labor and material were higher than in 1901, when she was built. Some of the witnesses testified that there had been an advance of twenty-five per cent. She was built as a passenger and freight boat, but, owing to the extension of railroad lines, or other reasons, it appears that she had ceased to be of use in the passenger service.

A number of the witnesses who have testified as to the value of the "Henderson" have made lump valuations. Captain J. H. Johnson, who built the "Henderson," and whom the evidence shows to have been a man of much experience in building boats, went greatly into detail in his estimate of the cost and depreciation of the "Henderson," placed the value of the "Henderson" at the time of the wreck at \$43,888.21. The testimony of this witness has been accorded great weight, yet it does not appear that sufficient allowance has been made in his estimate for depreciation during the ten years the "Henderson"

was in use. Among the items affected are:—the painting, house, boilers, engines, furniture and other minor items. The testimony of this witness shows, in estimating the depreciation, he took into consideration the present efficiency alone, without regard to the probable length of life of the articles valued, fixing the depreciation as low as two per cent. on one item, his contention being that the depreciation might be considered as resembling the quadrant of a circle, while at the last, the falling off would be rapid—a perpendicular drop. At the beginning, for a considerable period, it would be very little below the high level of the article when new.

It is concluded that this witness, in disregarding, in his estimate of value, the relation borne by the first cost to the probable length of life of the different items, placed the valuation \$5,000 too high. The total value is, therefore, fixed at \$38,888.21.

The gross value of the salvage is found to be \$16,835. There is a dispute concerning the amount that should be charged against this on account of the cost of salvage. The work of salving was done by other of libellant's boats. It is contended that more boats than were necessary engaged in this work and that too great a charge has been made for them. It is not probable that more men or boats were used during a busy season than appeared necessary, merely for the purpose of seeking recovery at the end of a long law suit. The evidence fails to disclose that any of them were unnecessary. While the amount charged

for the boats appears high, as compared with their ordinary employment, yet, when considered that the need was immediate and urgent; that libelant had to interrupt other employments in which the boats were engaged, to secure their services, the charge does not appear excessive.

The cost of salvage is found to be \$8,414.84, from which should be deducted \$100.00, which was afterwards realized on certain timbers used in the salvage work, making \$8,314.84. The net value of the salvage from the vessel is, therefore, found to be \$8,520.16. Deducting this from \$38,888.21, the value of the "Henderson" as found, there would remain \$30,368.05, the amount of libelant's damage occasioned by the loss of the "Henderson." To this should be added the value of the supplies and provisions aboard the "Henderson" at the time of the wreck—\$418.71 and \$83.99, respectively—making the total recovery to which libelant is entitled \$30,870.75, with interest at the legal rate from July 22, 1911.

Libelant to recover costs. The costs of respondent, Standard Oil Company, to be divided equally between libelant and claimant.

[Endorsed]: Decision on Merits. Filed Sep. 29, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 23 day of October, 1913, there was duly filed in said Court, a Final Decree, in words and figures as follows, to wit:

[Final Decree.]

(Title.)

This cause having been heretofore regularly submitted upon the pleadings and the evidence adduced by the several parties hereto and received upon the issues herein, Shaver Transportation Company, Libellant, appearing by Mr. C. E. S. Wood and Mr. Erskine Wood, Columbia Contract Company, claimant, appearing by Mr. Wirt Minor and Mr. Rogers MacVeagh, Standard Oil Company, Incorporated Under The Laws of The State of California, Respondent, appearing by Mr. Zera Snow and Mr. Geo. B. Guthrie, and a stipulation for the release of the Steamer "Samson" and Barges numbers 8, 9 and 27, having heretofore been duly filed and accepted, in and by which the stipulators, Columbia Contract Company and United States Fidelity and Guaranty Company agreed to abide by the decree of this Court, and of the appellate court; and the Court being duly advised in the premises:

IT IS NOW ADJUDGED AND DECREED that libellant, Shaver Transportation Company, have and recover of and from the claimant herein, Columbia Contract Company, a corporation, and from United States Fidelity and Guaranty Company, its stipulator on the stipulation filed herein for the release of the steamer "Samson" and her barges numbers 8, 9 and 27, the full sum of thirty thousand eight hundred and seventy dollars and seventy-five cents (\$30,870.75),

damages suffered by said libellant from the said collision referred to in the libel of libellant, which damages are now found and stated to be said sum of \$30,-870.75, together with interest thereon at six per cent. per annum from July 22, 1911, together with all costs and disbursements, taxed at \$675.79, and that execution issue for the said several sums of money now decreed in favor of said libellant on the demand of libellant or its proctors.

IT IS FURTHER ADJUDGED AND DECREED that the supplemental libel of Shaver Transportation Company, libellant herein, against Standard Oil Company, Incorporated Under The Laws of The State of California, be and the same hereby is dismissed, and that the costs and disbursements of said Standard Oil Company Incorporated Under the Laws of The State of California be and they are hereby taxed at \$382.70, and that said Standard Oil Company Incorporated Under The Laws of The State of California do have and recover of and from libellant one-half of said costs, to wit \$191.35 and do have and recover from Columbia Contract Company one-half of said costs, to wit, the sum of \$191.35, and that execution therefore issue severally and respectively against libellant and claimant on demand of said Standard Oil Company Incorporated Under The Laws of The State of California or its proctors.

That this decree be entered as a decree of the Court and as of date this 23rd day of October, 1913.

EDWARD E. CUSHMAN,
District Judge Sitting at the Trial.

[Endorsed]: Final Decree. Filed Oct. 23, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 27 day of October, 1913, there was duly filed in said Court, a Cost Bill, in words and figures as follows, to wit:

[Respondent's Cost Bill.]

(Title.)

TOTAL COSTS AND DISBURSEMENTS INCURRED BY RESPONDENT.

Clerk's fees up to and including entry of decree\$

Proctors prevailing fee 20.00

Proctor's fee for taking the following depositions at \$2.50 each:

- 1 Deposition William Kalberg before A. W. Person, Notary,
- 2 Deposition Captain C. B. Sorley, before A. W. Person, Notary,
- 3 Deposition John Osterwald before Mary E. Bell
- 4 Deposition Edward Sullivan before Mary E. Bell
- 5 Deposition Charlie Johnson before Mary E. Bell
- 6 Deposition Henry Stayton before Mary E. Bell
- 7 Deposition Ole Grove before Mary E. Bell
- 8 Deposition Eddie Grove before Mary E. Bell

- 9 Deposition J. W. Shaver before Mary E. Bell
- 10 Deposition J. W. Shaver before Mary E. Bell
(Recalled on the question of damages)
- 11 Deposition J. W. Shaver before Mary E. Bell
(Recalled in rebuttal on damages)
- 12 Deposition J. N. Smith before Mary E. Bell
- 13 Deposition A. L. Pease before Mary E. Bell
- 14 Deposition J. H. Johnston before Mary E. Bell
- 15 Deposition O. S. Hosford before Mary E. Bell
- 16 Deposition A. M. Conway before Mary E. Bell
- 17 Deposition Charles M. Nelson before Mary E. Bell
- 18 Deposition William B. Honeyman before Mary E. Bell
- 19 Deposition Joseph Supple before Mary E. Bell
- 20 Deposition Alfred Duncan before Mary E. Bell
- 21 Deposition Joseph Paquet before Mary E. Bell
- 22 Deposition Robert McIntosh before Mary E. Bell
- 23 Deposition Daniel Kern before Mary E. Bell

24	Deposition J. E. Copeland before Mary E. Bell	
25	Deposition G. Kirkham Smith before Mary E. Bell	
26	Deposition Peter Carsten before Mary E. Bell	
27	Deposition Daniel Kern before Mary E. Bell	
	(Recalled)	
28	Deposition C. W. Ball before Mary E. Bell	
29	Deposition J. H. LaMoree before Mary E. Bell	
30	Deposition C. W. Bale before Mary E. Bell	
31	Deposition S. H. Shaver before Mary E. Bell	
32	Deposition T. E. Follett before Mary E. Bell	
33	Deposition C. A. Purica before Mary E. Bell	82.50
	Paid Peter Carsten for survey of "Henderson"	50.00
	Paid Joseph Supple for survey of "Henderson"	75.00
	(2 trips and survey of damages)	
Witnesses:		
	Paid Peter Carsten, expert witness	20.00
	Paid Joseph Supple, expert witness	20.00
	William Kalberg, 1 day's attendance and mileage from San Pedro, California, 1270 miles	117.25

C. B. Sorley, 1 day's attendance and 1 mile	3.20
Notaries Fees For Taking Depositions:	
Paid A. W. Person for taking deposition	
William Kalberg	6.55
Paid A. W. Person one-half Notary's fees	
for taking deposition Captain Sorley.....	9.15
Paid Miss Bell one-half fees for reporting	
and furnishing transcript of evidence.....	207.00
<hr/>	
	\$614.45

Costs taxed at \$382.70 by order entered Dec. 15, 1913.

A. M. CANNON,
Clerk.
by G. H. MARSH,
Deputy.

District of Oregon,
Multnomah County—ss.

I, Zera Snow, being first duly sworn, depose and say: I am one of the proctors for respondent above named and am more familiar with the costs and disbursements incurred by the respondent in this suit than the respondent, or any officer of respondent. The foregoing statement of costs and disbursements is correct as I verily believe, and under the final decree of the cause the respondent is entitled to recover the same as follows: one half of the amount against the libelant, Shaver Transportation Company, and one-half of the amount against the claimant, Columbia Contract Company.

I further say that in the course of the investigation in behalf of respondent it became necessary to have surveys made of the Steamer "Henderson" touching and concerning the damage to the said vessel, the amount of which damage was disputed by the respondent, and that Peter Carsten and Joseph Supple, both practical boat builders of the City of Portland, were engaged to make such survey; that they each made a survey of the Steamer "Henderson" and of the damage thereto, the said Joseph Supple making two trips for the purpose and furnishing estimates of the amount of damage, the said Peter Carsten making one trip for the purpose, and that there was paid to each of the said parties by the respondent for the time consumed in making surveys and estimates the respective amounts set out in the foregoing statement of costs and disbursements. Subsequently, and at the trial of this suit both of the said witnesses were required to, and did, appear on the first day of the commencing of the trial and thereafter they were excused from time to time until they were finally called. The time consumed in the trial approximated not less than thirteen (13) days, being the time consumed at the trial before the court and the time consumed in taking testimony before the referee. That the amount actually paid the said witnesses for their attendance and testimony was the sum of Twenty (\$20.00) Dollars each, and I have therefore taxed the amount actually paid them instead of per diem, which is equivalent to some thirteen days attendance.

That the witness William Kalberg, whose testimony was given before a Notary Public in Portland, Oregon, was an important and necessary witness, and whose testimony was material to the issues in the case; that said Kalberg was not in the employ of the respondent, but having learned as to the whereabouts of the said witness, his attendance at Portland, Oregon, was secured and his deposition was taken and he was brought to Portland, Oregon for the purpose of giving his testimony and the cause not being ready for trial at the time of his attendance, his deposition was taken before A. W. Person, Notary Public. The amount actually paid to the said witness for his attendance, including his fare and expenses from San Pedro, California, to Portland, Oregon, was \$114.25; that the distance by regular travel from San Pedro, California, to Portland, Oregon, which is a steamer route, is approximately 1270 miles, which would approximate a mileage cost for the witness of \$127.00 one way, and the one day's attendance his fees and mileage one way would amount to \$130.00, but I have taxed as the costs of the said witness only the amount actually paid to the said witness, to wit, \$114.25, and with one day's attendance makes the total taxed for the said witness, \$117.25.

ZERA SNOW.

Subscribed and sworn to before me this 27th day of October, 1913.

(Seal)

C. McCORMAC SNOW,
Notary Public for Oregon.

[Endorsed]: Cost Bill of Standard Oil Co. Filed
Oct. 27, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 28 day of October,
1913, there was duly filed in said Court, a Cost
Bill, in words and figures as follows, to wit:

[Libelant's Cost Bill.]

(Title.)

Bill of Costs claimed by Libelant:

Clerk's fees	\$
Marshal's fees, serving monition	4.24
Proctor's prevailing fee	20.00
Proctor's fee for taking 33 depositions at \$2.50 each, as follows:	

Deposition of William Kalberg before A. W.
Person, Notary

Deposition of Captain Sorley before A. W.
Person, Notary

Deposition of John Osterwold before Mary E.
Bell

Deposition of Edward Sullivan before Mary
E. Bell

Deposition of Charlie Johnson before Mary E.
Bell

Deposition of Ole Grove before Mary E. Bell

Deposition of Eddie Grove before Mary E.
Bell

Deposition of H. F. Stayton before Mary E.
Bell

Deposition of J. W. Shaver before Mary E. Bell

Deposition of J. N. Smith before Mary E. Bell

Deposition of A. L. Pease before Mary E. Bell

Deposition of J. H. Johnson before Mary E. Bell

Deposition of J. W. Shaver, (recalled on the question of damages) before Mary E. Bell

Deposition of O. W. Hosford before Mary E. Bell

Deposition of A. M. Conway before Mary E. Bell

Deposition of Charles M. Nelson before Mary E. Bell

Deposition of William B. Honeyman before Mary E. Bell

Deposition of Joseph Supple before Mary E. Bell

Deposition of Alfred Duncan before Mary E. Bell

Deposition of Joseph Paquet before Mary E. Bell

Deposition of Robert McIntosh before Mary E. Bell

Deposition of Daniel Kern before Mary E. Bell

Deposition of J. E. Copeland before Mary E. Bell

Deposition of J. W. Shaver (recalled in rebuttal on question of damages) before Mary E. Bell

Deposition of G. Kirkham Smith before Mary
E. Bell

Deposition of Peter Carsten before Mary E.
Bell

Deposition of Daniel Kern before Mary E. Bell

Deposition of C. W. Bale before Mary E. Bell

Deposition of J. H. LaMoree before Mary E.
Bell

Deposition of C. W. Bale before Mary E. Bell

Deposition of S. H. Shaver before Mary E.
Bell

Deposition of T. E. Follett before Mary E. Bell

Deposition of C. A. Puriea before Mary E. Bell 82.50

Cost of taking deposition of Alex Martinson
and Charles Kayser before United States
Commissioner 30.25

Carried forward\$136.99

Brought forward\$136.99

One-half cost of reporting the depositions of
Captain Sorley before A. W. Person, Notary 9.20

Paid Miss Mary E. Bell for court reporting
and original transcript 207.00

Witness Fees:

Ed Sullivan, 7 days and 1 mile 21.10

Charles Kayser, 1 day and 1 mile 3.10

Alex Martinson, 1 day and 1 mile..... 3.10

Eddie Grove, 5 days and 75 miles 22.50

Charlie Johnson, 5 days and 75 miles 22.50

Ole Grove, 7 days and 1 mile 21.10

Elias Dahl, 2 days and 80 miles	14.00
Martin Loaland, 2 days and 1 mile	6.10
John Ostervolt, 7 days and 1 mile	21.10
D. C. O'Reilly, 1 day and 1 mile	3.10
Joe Oleson, 1 day and 50 miles	8.00
H. F. Stayton, 7 days and 1 mile	21.10
Henry Kness, 3 days and 1 mile	9.10
J. W. Shaver, 13 days and 1 mile	39.10
C. B. Sarley, 1 day and 1 mile	3.10
Chris O'Bryan, 4 days and 1 mile	12.10
Michael Moran, 1 day and 1 mile	3.10
J. H. Smith, 1 day and 1 mile	3.10
A. L. Pease, 1 day and 1 mile	3.10
J. H. Johnson, 1 day and 18 miles	4.80
O. W. Hosford, 1 day and 1 mile	3.10
A. M. Conway, 4 days and 1 mile.....	12.10
Charles M. Nelson, 1 day and 1 mile	3.10
William B. Honeyman, 1 day and 1 mile.....	3.10
G. Kirkham Smith, 1 day and 1 mile.....	3.10
<hr/>	
Total	\$678.19

WOOD, MONTAGUE & HUNT,
Proctors for Libelant.

Costs taxed at \$675.00 by order of Court entered
Dec. 15, 1913.

A. M. CANNON,
Clerk.
by G. H. MARSH,
Deputy.

[Endorsed]: Bill of Costs Claimed by Libelant.
Filed Oct. 28, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 29 day of October, 1913, there was duly filed in said Court, Objections of Libelant to Cost Bill of Respondent, in words and figures as follows, to wit:

**[Objections of Libelant to Cost Bill of
Standard Oil Co.]**
(Title.)

Libelant objects to the following items in said cost bill, to wit:

"Paid Peter Carsten for survey of "Hender- son"	\$ 50.00
Paid Joseph Supple for survey of "Hender- son"	75.00"

Libelant's objection to these items is that disbursements made for surveys are not taxable.

Libelant further objects to the following items, to wit:

"Paid Peter Carsten, expert witness.....	\$ 20.00
Paid Joseph Supple, expert witness.....	20.00"

for the reason that money paid to hire experts to testify is not a taxable cost.

And libelant further objects to the following item, to wit:

"Paid William Kalberg, 1 day's attendance and mileage from San Pedro, California, 1270 miles	\$117.25"
--	-----------

Libelant's objection to this item is that said witness came from without the District of Oregon and the most that can be allowed him for mileage is 100 miles at ten cents a mile, equivalent to \$10.00.

WOOD, MONTAGUE & HUNT,

Proctors for Libelant.

[Endorsed]: Objections to Cost Bill. Filed Oct. 29, 1913.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 1 day of November, 1913, there was duly filed in said Court, Claimant's Objections to Cost Bill of Libelant, in words and figures as follows, to wit:

[Claimant's Objections to Cost Bill of Libelant.]

(Title.)

To the Honorable Edward E. Cushman, Judge of the District Court of the United States for the District of Oregon, sitting in Admiralty.

Comes now Claimant herein Columbia Contract Company, a corporation, by its proctors, and objects to the Bill of Costs filed by Libelant herein, Shaver Transportation Company, a corporation, and respectfully shows to your Honor that said Bill of Costs contains items which are not properly taxable by said Libelant against Claimant herein and should therefore be stricken out and disallowed, in the respects and for the reasons hereinafter set forth, to wit:

I.

The thirty-three items, taxed at \$2.50 each and described as "depositions," representing, with the exception of the first two (described respectively as depositions of William Kalberg and Captain Sorley before A. W. Person, Notary), testimony taken before Miss Mary E. Bell, Special Examiner, did not constitute depositions, and Libellant, by its proctors, is therefore not entitled to tax same.

Even if such testimony were taxable as depositions, the 9th, 13th, and 24th items, being the testimony of the same witness, J. W. Shaver, though appearing at different places in the transcript of testimony, should be charged for as one deposition only, not as three separate depositions; likewise the 22nd and 27th items, being the testimony of the same witness, Daniel Kern, should be charged for as one, not as two; and the 28th and 30th items, being both the testimony of the same witness, C. W. Bale, who testified only once (as appears from the transcript of testimony herein), and being thus duplicate charges for the same thing, should one of them be in any event, disallowed and stricken out.

II.

If this Court should consider the testimony given before the Special Examiner properly taxable as depositions, nevertheless the 18th and 26th items, representing respectively the testimony of Joseph Supple and Peter Carsten, should be disallowed and stricken

out for the reason that the said witnesses Supple and Carsten were not called by Libelant, but by Respondent in personam, as appears from the transcript of testimony. Similarly the 19th, 20th, 21st, 22nd, 23rd, 27th, 28th, 29th, 30th, 31st, 32nd, and 33rd (twelve in all) items, representing respectively the testimony of Alfred Duncan, Joseph Paquet, Robert McIntosh, Daniel Kern (twice), J. E. Copeland, C. W. Bale (twice), J. H. La Moree, S. H. Shaver, T. H. Follett, and C. A. Puriea (ten in all), should be disallowed and stricken out, for the reason that all of the said ten witnesses were not called by Libelant, but by Claimant, as appears from the transcript of testimony. Consequently it is submitted that all of the fourteen above enumerated items should, under Equity Rule 50, be disallowed and stricken out.

Respectfully submitted,

TEAL, MINOR & WINFREE,
WIRT MINOR,

Proctors for Claimant.

ROGERS MACVEAGH.

[Endorsed]: Objections to Cost Bill of Libelant.
Filed Nov. 1, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 1 day of November, 1913, there was duly filed in said Court, Objections of Claimant to Cost Bill of Respondent in words and figures as follows, to wit:

[Claimant's Objections to Cost Bill of
Standard Oil Co.]

(Title.)

To the Honorable Edward E. Cushman, Judge of the District Court of the United States for the District of Oregon, Sitting in Admiralty.

Comes now Claimant herein Columbia Contract Company, a corporation, by its proctors, and objects to the Statement of Costs and Disbursements filed by Respondent in personam, Standard Oil Company, incorporated under the Laws of the State of California, a corporation, and respectfully shows to your Honor that said Statement contains items which are not properly taxable by said Respondent in personam against Claimant herein and should therefore be stricken out and disallowed, in the respects and for the reasons herein set forth, to wit:

I.

Items numbered 3 to 33 inclusive, being all of the items numbered 1 to 33 inclusive excepting numbers 1 and 2, represent proctor's fees of \$2.50 each for testimony taken before Miss Mary E. Bell, Special Examiner. Such testimony did not constitute depositions, and Respondent in personam, by its proctors, is therefore not entitled to tax same.

Even if such testimony were taxable as depositions, items numbered 9, 10, and 11, being the testimony of the same witness, though appearing at different places in the transcript of testimony, should be

charged for as one deposition only, not as three separate depositions; and likewise items numbered 23 and 27 should be charged for as one, not as two. Items numbered 28 and 30 are described respectively as "C. W. Ball" and "C. W. Bale" and charged for separately; but as it appears from the transcript of testimony that only one witness named "C. W. Bale" testified, that no witness named "C. W. Ball" appeared, and that the said witness C. W. Bale testified only once, the item numbered 28 and described as "C. W. Ball" should in any event be disallowed and stricken out.

II.

If this court should consider the testimony given before the Special Examiner properly taxable as depositions, nevertheless only two of the items herein objected to, namely items numbered 19 and 26, should be allowed, for the reason that they are the only ones corresponding with the witnesses called by Respondent in personam, all the witnesses described in the rest of the items numbered 3 to 33 inclusive being witnesses called by either Libellant or Claimant, as appears from the transcript of testimony herein; consequently all of the items numbered 3 to 33 inclusive, with the exception of items numbered 19 and 26, should, under Equity Rule 50, be disallowed and stricken out.

III.

The item included under the heading of "Witnesses" and described as "C. B. Sorley, 1 day's attend-

ance and 1 mile, \$3.20," should be altered so that the sum of \$3.20 be changed to \$3.10, as the proper allowance for 1 mile is ten cents, not twenty.

IV.

Claimant does not intend the above objections to be taken as a waiver of its objection, previously brought before this Court, to the whole of the Statement of Costs and Disbursements filed by Respondent in personam, on the ground that Claimant should not be held liable for any of the costs of Respondent in personam, a party not brought into the case at bar by Claimant; and Claimant insists that for that reason any taxation against Claimant of any part of the costs or disbursements of Respondent in personam is improper, inequitable, and should be disallowed.

Respectfully submitted,

TEAL, MINOR & WINFREE,
WIRT MINOR,

Proctors for Claimant.

ROGERS MACVEAGH.

Since preparing the above, an order has been made vacating the ruling of this Court sustaining objections by Libelant to certain items in the cost bill of Respondent in personam, and therefore Claimant, by its proctors, also objects to the two items of \$50.00 and \$75.00 each, described as having been paid to Peter Carsten and Joseph Supple respectively for survey of the "Henderson," to the two items of \$20.00 each described as having been paid to the same persons as expert witnesses, and to the witness fee and

mileage from San Pedro, California, described as having been paid to William Kalberg, on the grounds that the charge for the survey is not properly taxable against Claimant herein, and that the fees for "expert witnesses" and the allowance of mileage from San Pedro, California, were not necessarily incurred and are in excess of the amounts in such cases allowed by law, and that therefore each and every one of the five items hereby objected to should be disallowed and stricken out.

WIRT MINOR,
ROGERS MACVEAGH,
Proctors for Claimant.

[Endorsed]: Objections to Cost Bill of Respondent. Filed Nov. 1, 1913.

A. M. CANNON,
Clerk U. S. District Court.

And afterwards, to wit, on the 15 day of December, 1913, there was duly filed in said Court, an Opinion on Objections to Cost Bills, in words and figures as follows, to wit:

[Opinion on Objections to Cost Bills.]
(Title.)

WOLVERTON, District Judge:

In this case a decree was rendered in favor of the Shaver Transportation Company, Libelant, and against the Columbia Contract Company, Claimant. A supplemental libel was filed against the Standard Oil Company, Respondent. This latter was dis-

missed, and the Standard Oil Company awarded its costs, one-half against the libelant and one-half against the claimant. Cost-bills have been filed by libelant and respondent. The claimant has interposed objections to both cost-bills, claiming that it is not liable to pay the item of 33 depositions and the further items paid, Peter Carsten, \$50, and Joseph Supple, \$75, for survey of Henderson; also paid Peter Carsten, \$20, and Joseph Supple, \$20, expert witnesses; William Kalberg, one day's attendance and mileage from San Pedro, California, 1270 miles, \$117.25, and as to the latter for the reason that Kalberg was entitled to mileage only for 100 miles each way, he having attended as a witness from without the district. The libelant objects to the cost-bill of respondent as to all the items above mentioned except the one relating to depositions.

As it relates to the item of 33 depositions at \$2.50 each for attorney's fees, it appears that at the hearing of the cause before Judge Cushman, from the Western District of Washington, he, being unable to conclude the case, appointed Miss Bell, the reporter, special examiner to take such other testimony as was desired and report the same to the court. These depositions were all taken before her as such officer, and so reported. It is objected that the depositions should not in a legal sense be so termed, because taken before a special examiner; hence that the attorney's fee respecting them should be disallowed. The question seems to be concluded by the Supreme Court of the United

States, in the case of *Missouri v. Illinois and The Sanitary District of Chicago*, 202 U. S. 598, 600. There the court says:

“The words of the statute are broad enough to embrace the testimony, unless they are taken very strictly, and the trouble to the parties in having to visit different places was similar to that caused by the taking of depositions adverted to by Judge Treat in *Strauss v. Meyer*.”

In this case, the testimony was taken before the examiner and reported in the form of depositions, which, the court observed, was “quite distinct from that of testimony taken in court and reduced to writing by a reporter.” And the costs were allowed.

The case at bar stands upon the same footing practically as that, and therefore this item of costs must be allowed here. The further objections, namely, that some of the depositions were duplicated and some were taken at the instance of the libellant are not well taken.

The next two items of cost may be considered together, namely, Peter Carsten, \$50, and Joseph Supple, \$75. These items were incurred on account of the survey made by Carsten and Supple with the purpose of rendering testimony concerning the same in court. It is strongly urged that these items should be allowed by virtue of the discretion that the court has respecting the allowance of costs in equity and admiralty cases. Counsel are in error as to the proposition that the court has a discretion as a general rule to

allow costs not taxable under the law. . The discretion extends ordinarily only to the apportionment of costs. That is to say, the courts of chancery and admiralty have the power to apportion the costs, whatever they may be, the costs being legitimate, to the parties in the case as may seem just and proper in equity. This is as far as the general rule extends. Benedict's Admiralty, Sec. 550; *The Scotland*, 118 U. S. 507, 519; *Tuck v. Olds et al.*, 29 Fed. 883; *Union Ice Co. v. Crowell et al.*, 55 Fed. 87; and *The E. A. Shores, Jr.*, 79 Fed. 987.

A party to a cause has the burden of preparing his own case for trial, and usually expenses to which he is put in the preparation of the case are not allowable as costs. Costs, it is said, are a creature of the statute (*Tuck v. Olds*, *supra*), and the case must be an exceptional one if anything beyond is ever allowed as costs.

Reference is made to *The Europe*, 175 Fed. 596, a case decided in this court, as authority for allowing the survey charges of Carsten and Supple as an item of costs. In that case, however, the items of survey, whatever they were, seem to have been allowed, not as costs but as part of the damages which the libellant was entitled to recover, and hence the case does not apply herein, as it pertains to the matter of costs. The cost of premium for securing a bond for release of a ship bears but little analogy to the costs for making survey where it is done at the instance of a party for the purpose of using it as testimony in the case.

The two items to Peter Carsten and Joseph Supple, of \$20 each as expert witnesses, will be allowed, upon the same grounds as they were allowed by Judge Cushman, namely, because it is disclosed by respondent's affidavit that these witnesses were in attendance for the purpose of testifying for a length of time sufficient to amount to more than \$20 at the regular fee for witnesses, and that respondent did actually pay each of the witnesses \$20.

The item of \$117.25 for the attendance of William Kalberg must be disallowed, except to the amount of \$13, by authority of the case of *United States v. Southern Pacific Company*, 172 Fed. 909, 911.

It is further claimed that the court, in its discretion, might allow the actual mileage because of the peculiar circumstances which required the attendance of the witness, and this under the authority of *The Vernon*, 36 Fed. 113, 117. But the showing here does not present any peculiar circumstance why the personal attendance of the witness was required. In the end the testimony was taken by deposition, and not in open court, so that there is no special reason why the court should extend its discretion, whatever it may have, in that direction, to enlarging the legal fee allowed for the attendance of witnesses.

[Endorsed]: Opinion. Filed Dec. 15, 1913.

A. M. CANNON,

Clerk.

by G. H. MARSH,

Deputy.

And afterwards, towit, on Monday, the 15 day of December, 1913, the same being the Judicial day of the Regular November Term of said Court; present: the Honorable CHAS. E. WOLVERTON, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

[Order Settling Costs Bills.]

(Title.)

This cause was heard upon the objections filed by the libelant and claimant to the cost bill of the respondent, Standard Oil Company, and upon objections of claimant to the cost bill of libelant, and was argued by Mr. Erskine Wood, of proctors for the libelant and by Mr. Rogers McVey, of proctors for the claimant, and by Mr. Zera Snow and Mr. C. McCormack Snow, of proctors for the respondent; on consideration whereof, it is Ordered and adjudged that the following items in said cost bill be, and the same are hereby disallowed:

C. W. Bale, Attorney's fee for deposition.....	\$ 2.50
Peter Carsons, for survey of the Henderson....	50.00
Joseph Supple, for survey of the Henderson.....	75.00
Mileage and witness fees, Wm. Kalberg.....	117.25

except that \$13 be allowed as costs for said witness, and it is further ordered that the remaining items in said cost bill be, and the same hereby are allowed.

and that libelant's costs be, and the same are hereby taxed at \$675.69 and that Respondent's costs, be and the same are hereby taxed at \$382.70.

[**Testimony.**]

*In the District Court of the United States for the
District of Oregon.*

SHAVER TRANSPORTATION COMPANY,
Libellant,

vs.

COLUMBIA CONTRACT COMPANY,
Claimant.

STANDARD OIL COMPANY,
Respondent.

IN RE: SAMSON.

C. E. S. Wood and Erskine Wood, Proctors for Libellant.

Mr. Wirt Minor, Proctor for Claimant.

Mr. Zera Snow and Mr. Guthrie, for Standard Oil Company.

Edward E. Cushman, District Judge.

Portland, Oregon, Tuesday, January 7, 1913, 10 A. M.

CAPTAIN EDWARD SULLIVAN, a witness called on behalf of the libellant, being first duly sworn testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Captain, what is your business?

A. River pilot.

Q. On what river?

A. The Columbia and Willamette Rivers.

Q. How long have you been engaged in that occupation?

A. About 25 years.

Q. On this river all the time?

A. No, on the two rivers.

Q. On the two rivers?

A. All the time, yes.

Q. What was the date of this collision, do you remember?

A. July 21, 1911.

Q. Was it the 21st?

A. The 22nd, I would say. The morning of the 22nd.

Q. I wish you would tell the court briefly, the dimensions and descriptions of the oil barge.

A. The Standard Oil Barge is a steel sea-going barge, designed to carry fuel oil in bulk. She is 280 feet long, 45.4 beam, 23.4 depth of hold. She is four-mast rigged with fore and aft sails, barque. She has steam boiler for generating steam for her pumps discharging cargo, steam windlass, steam steering gear, steam towing engines, and steam whistle, and capstans and winches for handling the line and hawser, and land gear.

Q. Has she any propelling power?

A. No propelling power of her own.

Q. What sort of anchors has she?

A. She has two patent anchors. I don't know just the weight of them. They are very large, and an excellent gear for handling the anchors. The best, probably, that is known.

Q. Can you tell how that gear works?

A. Well, they are arranged, after the anchor is hove in, it hangs in the hawser pipe, and runs over a wild cat, over a drum which is held from revolving by compression brakes. That in turn is held by a screw. They are something similar to the brake or wheel on a car to slack it or hold it in place, and in letting go the anchor, after it is hove in, the gear that handles the—

Mr. MINOR (Interrupting): Louder, please.

A. It is prepared for letting go by detaching it from the engine, which is probably a friction or a clutch, and this compressor then holds the chain from running out; it holds this drum from revolving which it passes over; and to let it go, is simply loosening this wheel about half a turn, perhaps, and the anchor by its weight runs out rapidly. The chains is large. I think perhaps $1\frac{3}{4}$ inch diameter. Links in the chain; very heavy gear.

Q. Do you know anything about the dimensions and style of the boat Henderson?

A. The Henderson is a sternwheel steamer, built of wood, 160 feet long in the hull, and a wheel 20 feet in diameter, making a total length of about 180 feet. She is 31 foot beam, with a guard on either side projecting out two feet, making 35 feet over all.

Q. Stern wheel boat?

A. Stern wheel boat, yes.

Q. How was the manner of lashing these boats together for the tow?

A. Well, they are made fast alongside. In this

particular steamer, about 100 feet of her length would be alongside the barge, and the remaining 80 feet would extend out beyond the stern of the barge.

Mr. SNOW: That is 100 feet of the length of the Henderson?

A. 100 feet of the length of the Henderson would lie alongside the oil barge, and the remaining 80 feet would extend out beyond the stern.

Q. And at what angle do the two boats lie to each other?

A. Well, it is customary and usual to let them lie at an angle with the bow of the tow boat towards the steamer, instead of being parallel with the beam, or a straight line of the side of the two vessels; the bow of the tow-boat is brought in at an angle, I should judge, of this particular boat, at this particular time, about three feet from a straight line parallel of her stem with the side of the barge. Then if the boat was, say, $17\frac{1}{2}$ feet deep, would be practically 15 feet from her stem as she lay to the side of the oil barge.

Q. What is the reason for placing the boats at this slight angle, instead of parallel to each other?

A. Well, it helps the steering. The steamer—the tendency of the steamer is to push the head of the barge aground. Naturally, the pulling comes from the after end of the boat. The tow line leads from the bow of the steamer to near the stern of the barge, and the tendency is to pull it around. To obviate that the bow of the barge is brought a little across nearer the bow of the steamer, so the current will catch on

that side to allow for that push and a sufficient amount to—that is adjusted by the feel of the handling of the boat; when they start out, they determine whether it is too much or too little, and they change it accordingly. That is quite an important matter.

Q. Then, as I understand you, the towboat being lashed to the port quarter of the oil barge has a tendency to push the bow of the oil barge over to the starboard all the time; is that right?

A. Yes, sir.

Q. And to obviate that, you turn the barge at a slight angle across the towboat in order that she may catch the water on her starboard bow, and steady herself that way. Is that it?

A. That is the idea. That is it, yes, sir.

Q. Were you on board as pilot that night?

A. Yes, sir.

Q. You were in control of both boats, were you?

A. Yes, sir.

Q. Was any steering done from the Henderson?

A. None at all.

Q. Where were you on the oil barge?

A. Standing on the forecastle. The pilot house of this particular barge is built on the forecastle. I presume the idea is on account of having sails, it gives those who are in charge, and the man steering an opportunity to be ahead of the sails, so that he will have a clear view forward; so this pilot-house is arranged, probably, about 25 feet from the bow. I don't know exactly as to that, but I should imagine about that.

It is only a small structure built there, about, perhaps, 6x10 feet, and built on the after part of this deck,—of this forecastle.

Mr. MINOR: After part of what? I didn't hear you, Captain.

A. It is built on the after part of the deck; that is, it is on the extreme after part of this forecastle deck, and this deck covers or forms a room underneath in which the winch and the anchor windlass is located, and they have access to that from this deck, by an iron ladder on either side of the steamer—of the vessel, and from the main deck into this place are two iron doors, one either side near the ladders; so a man can go down the ladder and go into this door, and go in the place in which the anchor windlass is located, and at night time there are lights burning there all the time. In the day time it is lighted by small skylights in this deck, that allows the daylight to get through. At night time the electric lights are burning there all the time.

Q. How high is the forecastle deck above the main deck?

A. I think about 7½ feet, I should judge.

Q. Is there anything on the steamer to obstruct the view of the pilot on the forecastle?

A. None whatever. Clear view forward, and also would be clear view aft by simply stepping to one side or the other of this pilot house. The place where the pilot stands or stays is anywhere on that deck, in front of the pilot house or to one side, so he has a

clear view in all directions.

Q. Where are these wheels that let go the anchors in relation to the forecastle deck?

A. Well, they are underneath this deck, and almost in a line with these different doors. Each one is sparated from the other, and about in a line with these doors, so that a man goes right into the anchors, to these winches the first thing.

Q. On this particular night in question, was the oil barge lashed to the steamer at this slight angle that you have been talking about?

A. Yes, sir.

Q. When did you leave—first, I will ask you where did you lash onto the Henderson?

A. In front of Astoria. She was brought into the river by the steamer, I think it was the Atlas, and dropped there. It let go of her, and she was adrift and the Henderson went alongside and made fast to her in the river.

Q. You say it lashed on with what lines?

A. Well, she had a head line of seven inch Manila, seven inch in circumference, and onto the end of that was a wire pendant of $\frac{7}{8}$ inch steel wire. Then she had two breast lines leading from her bits on the bow across the deck—the rail of the oil barge, $\frac{3}{4}$ inch steel wire; then a tow line leading from this bow—

Mr. SNOW (Interrupting): When you say $\frac{3}{4}$ inch, do you mean $\frac{3}{4}$ diameter?

A. $\frac{3}{4}$ diameter. Wire is measured by diameter—rope by circumference.

Mr. SNOW: In speaking of wire rope you speak of diameter, and of Manila rope, you speak of circumference?

A. Yes, that is the way rope is used; speaking of seven inch Manila rope, it is seven inch circumference, and wire rope, always the term is used for diameter. This tow line was one inch wire, steel wire; then two stern lines that leads from the steamer across to the opposite side of the barge across its stern. They have seven inch Manila in circumference, with seven inch steel wire pendants.

Q. You didn't state how the tow line was lashed.

A. Well, the tow line, it has an eye in it. It is passed over the steamer and put over one of the bits, and through a chock or cleat there, whatever conveniences for them, and carried then in a forward direction to a specially made cleat on the bow, one made unusually heavy and fastened strong for this purpose, and leads to that and is made fast in a substantial manner, so the entire power of the boat is pushing against this wire, and it necessarily has to be strong. That is, the main strain of the towing is done on this wire, the tow line.

Q. What time did you lash together at Astoria?

A. I remember we left there about 8:45 after being there; probably got under way about 8:45 P. M.

Q. On what day was that?

A. That was on the 21st of July.

Q. What was the tide, then, Captain?

A. Well, the tide on that day, according to the

tide table, says high water at 9:40 P. M. Be about an hour of flood left when we started.

Q. How would that influence your progress?

A. Of course, it would accelerate our speed as long as it lasted.

Q. Going up the river, you mean?

A. Going up the river, running in the direction in which we would be going. While it lasted, it would make quite a difference in our speed.

Q. The ebb tide started in about 9:40.

A. The ebb tide, according to the table, started at about 9:40 at Astoria.

Q. What time did you reach Skamakowa light, lower Skamakowa?

A. We passed there about 12 o'clock. I noticed particularly, because eight bells rang and we changed watches; a new quartermaster came on and new barge officer.

Q. About how far was that from where you started from?

A. That, according to the engineer's scale, as given us, was 20 miles from Astoria; that is what we estimate always, at least. We call it 20 miles; known as 20 miles from Astoria generally.

Q. About how far up the river from Skamakowa light had you proceeded when you sighted the Samson? I mean roughly, about how far?

A. Well, I would think about four miles.

Q. About four miles, do you say?

A. Yes.

Q. What would be the difference, approximately, in the times of the tide between Astoria and the place of collision?

A. About an hour and 45 minutes, I believe, is estimated for that place.

Q. What do you mean by that? What place is the tide earlier at?

A. Well, it would be earlier at Astoria, near the sea, and that much later at this point.

Q. Now, about where were you, do you think, in relation to Puget Island, when you sighted the Samson?

A. Well, I think we were passing the point about in the vicinity of an old trap that is there; somewhere in that vicinity. Of course, that was a point that wasn't definitely located, because there was no reason to locate it. The night was dark, and the high land looked similar, but I think, judging from Cathlamet lights I saw, that I happened to notice, that we were about that trap, or possibly a little above it.

Q. Have you any idea how far above the point of the island that would be, the lower point of the island.

A. No, I couldn't say.

Mr. SNOW: You mean Cathlamet, Washington?

A. Yes.

Q. And at that time, Captain Sullivan, what course were you steering?

A. Well, I was steering on the range light known as Hunting Island Range.

Q. And were they ahead of you, or astern of you?

A. They were astern; was looking astern to see them.

Q. I wish you would just locate these lights on this chart here.

Mr. MINOR: Unless the chart is identified in some way, as being prepared by some person who is an engineer and knows it to be correct, I shall have to object to it.

COURT: Will you furnish that proof later?

Mr. ERSKINE WOOD: Yes.

COURT: Counsel undertakes to furnish that proof later.

Mr. ERSKINE WOOD: I will show it was prepared in the office of the United States Engineers here in Portland.

COURT: If he undertakes to furnish the proof later to the effect that it is an accurate and correct map, he may proceed with it.

Mr. C. E. S. WOOD: We will furnish that, but even without that proof, it seems to me witness can testify, and say these things are approximately right, and he can locate his position.

COURT: If you can prove the map by the witness himself, of course.

Mr. C. E. S. WOOD: When he identifies the location, it will have to be marked or initialed and get it in the record to correspond. Don't just say "here" and "there."

Q. First, I will ask you, Captain Sullivan, wheth-

er you recognize that map as an approximately correct sketch of the river at this point?

A. I do.

Q. Then will you indicate where the Hunting Island Range lights are.

Mr. MINOR: Until the map is in evidence, I don't think he can do that. If he offers it in evidence, I think he can use it.

COURT: I apprehend that it has been identified now, has it?

Mr. ERSKINE WOOD: Yes.

Mr. MINOR: Yes, but not offered. He says he recognizes it as approximately correct.

Mr. C. E. S. WOOD: Is that the map you officially use on the river?

A. That is the official chart made by the Government engineers. We would recognize that as such. This is a different scale.

COURT: I think the witness can point out on the map, and identify these locations. Then it can all be offered together.

Mr. MINOR: They might not offer it at all.

Mr. C. E. S. WOOD: We intend to offer it. We were going to do just as the court suggests. We were going first to get it on the map, and then offer it in evidence. We will offer it now, if that will relieve your mind on that point.

COURT: It will be admitted.

Marked "Libellant's Exhibit 1."

Q. Now, Captain, will you indicate on that map

where the Hunting Island Range lights are?

A. This indicates one of the lights. The other is back in the woods. It doesn't show. It is off the water. This is on the water line showing there. (Indicating).

Q. Where is the range that is marked by these lights?

A. This is the mark (indicating).

Mr. SNOW: Mark it on the map.

A. It is marked on the map.

Q. How is it marked on the map?

A. This line (indicating).

Q. What is the line?

Mr. C. E. S. WOOD: The line on the map marked "range." Is that it?

A. That is the idea, yes.

Q. Captain, mark the light that you have described as the Hunting Island Range light, on the edge of the water, with the initial "L," and your own initials E. S. under it.

A. (Marking.) Is that the idea?

Q. Yes. Now, will you fix there an arrow showing the down-stream current in the Columbia River—indicating which is downstream.

A. (Marking) Right under that?

Q. "E. S." under there. Now, will you explain to the court what you mean by steering with these range lights over your stern.

A. This range light is intended to mark a dredged channel in the shoal along in this point. In order to

get into this dredged channel, these ranges are put in a line, that is the rear light would be brought in line with the front light, and that would mark approximately this line as it is shown on the chart, and in steering on that range, it would be necessary to get these over the stern, if we were going upstream, in a row, and when they show that they are in a row over the stern, then we are on this range. That is the idea.

Q. Will you indicate, as nearly as you can, your position at the time you sighted the Samson coming downstream above you.

A. This would be the range (indicating). I had better draw that line in full across there.

Q. Now, just mark that with a letter. Just mark "oil barge" there (Witness does so). At that time, then, you mean to indicate that you were still on the ranges?

A. Still on the ranges.

Mr. C. E. S. WOOD: I don't think that is very legible. If no objection, I will put that in. What is this—"E. S."?

A. Yes.

Mr. C. E. S. WOOD: What is this—"barge"?

A. Barge.

Mr. C. E. S. WOOD: I will mark that spot (marking).

Q. Do you mean to indicate, Captain, that you were on the ranges at that time?

A. Yes, sir.

Q. And slightly above the lower point of Puget Island?

A. Yes, sir.

Q. Now, about how far upstream would you think the Samson was at that time?

A. The distance, you mean?

Q. About how far up from you?

A. Well, from the measurements I have taken on that chart, it shows about a mile and a half away.

Q. Well, will you indicate on the chart about where you think she was when she came in sight. (Witness indicates.)

Mr. SNOW: That is the Samson, is it?

A. Yes.

Q. Is that round circle underneath the "Samson" meant to indicate the Samson?

A. Indicates the Samson.

Mr. C. E. S. WOOD: If you will allow me, I will say "A" is the position of the oil barge when the Samson was sighted, and "B" the position of the Samson. Is that right, Captain?

A. Yes, sir.

Q. Indicate on the chart, Captain, the high bluff on the Oregon side that has been spoken of. (Witness does so.)

Mr. C. E. S. WOOD: "High bluff E. S."

Mr. SNOW: What is the extent of that bluff? That is, how much territory does it cover?

A. Well, it is the terminus of a bluff, or a point of land that runs a long distance. This is the end of it.

Mr. C. E. S. WOOD: This is the downstream end of it?

A. Yes, sir. It runs parallel with the river until it leaves the river and goes back. This is low land (indicating). But it is the terminus of a long high point.

Q. About how far up the river does it run from the point? You have marked that with a cross.

A. Well, up the river it would run about to this point; it would leave the river (indicating).

Mr. C. E. S. WOOD: Say about the distance. That doesn't mean anything in the record.

Q. About opposite the point where the Samson is marked with the "B"?

A. Yes.

Q. Now, Captain, from these relative positions of the oil barge and the Samson, I want you to tell the Court the course you steered, and the signals you gave, just as you think it happened.

Mr. SNOW: How many men had you on the barges also? Just tell that in connection with the working of the barge.

A. There was a quartermaster steering, and the officer on watch, and myself were the crew of the barge at that time.

Q. Where were they on the barge?

A. The quartermaster was in the pilot house on the forecastle head. The officer was standing by me or in company with me, on the bow, or forward of this pilot house.

Q. Now, go ahead and tell what happened from that point on.

A. I first noticed the lights of the steamer making the turn around this bend in the river at this point indicated here by "B," and in looking again, I noticed that both side lights, that is the red and green light of the steamer, were showing; also her towing lights, which were two white lights on a mast, and a single white light onto one side, which, I presume, was the starboard bow of the tow. Now, this steamer and this tow is a very familiar sight to me. I see them each time I go down the river, which probably averages twice each week, and I at once recognized what it was by these lights, the peculiar arrangement of the lights, and I knew it was the Samson with three of these rock barges loaded with rock, and I made provision at once to pass her on the right-hand side; not only to go out of the way to do so, but to indicate to her pilot that I intended to do that by putting the helm slightly to port and running off in a direction at somewhat of an angle to this range we were running until we reached a point—until these ranges were open from this side, what we call the lower side, the right-hand side, or the Oregon side, of this range; until they were well open. That might bring us 500 or 600 feet below that range.

Mr. C. E. S. WOOD: Before we get too far away, let me correct something. You say to right, passing to right. You mean your right?

A. Helm to port, to the right of the range, to the

Oregon side of the range; then I straightened up parallel with this range, about parallel with this range, and steered for this point, this high bluff, which shows against the sky line quite plain.

Q. What part of the bluff on the map?

A. To a point of the bluff as indicated here by this cross. That would indicate the point of the bluff as it comes to here.

Mr. C. E. S. WOOD: "High bluff, E. S."

A. Yes, and steered in the direction of that bluff, using that as a mark to steer for, and indicated to the quartermaster that was the point and the direction which I wanted to take, about paralleling this range, and within what I estimate to be about half a mile, the Samson coming in this direction towards us, and we going; when about a half a mile apart, I blew a long blast of the steam whistle of the barge. This was promptly answered by the Samson, one blast. We continued on our course in the same direction, approximately; the Samson seemed to be on a course—both her lights were showing—that would intercept our course if we kept on going till we met. Well, I had no reason to apprehend, or to think, or to suspect that this Samson didn't understand this whistle, as she had answered it, and that at the proper time, she would not put her helm to port and shear off, and permit us to go on our way without trouble.

Mr. SNOW: Would put her helm to port?

A. Would put her helm to port and shear off to the right-hand, as the whistles indicated. This bluff or

shore, of course, is a rocky shore; we were approaching this all the time getting nearer this bank; the Samson continued coming on without apparently changing her course, and we reached a point where I judged we were about 500 feet apart; the relative positions of the boats seemed to be about the same. We hadn't changed. It was scarcely reasonable for me to turn any further to the right on account of the shore. I assumed that he would take—still would take some precaution to get out of the way, but I was becoming alarmed that it wouldn't happen until we had gotten so near the shore that there would be some danger of colliding with the bank, so I blew another blast of the whistle that was more of a warning to him that we were crossing him, coming together, drawing his attention to the fact that we were together; that particular part I don't remember whether he answered it or not. I believe it is claimed by the Samson that they did, but that I didn't hear it would be unusual, because it was getting to the place where it might be serious for me. Just prior to this time, the man who was standing—I asked the man who was standing on the bow if there was any one who could handle the anchors if needed.

Q. When, you say? Prior to this time?

A. Just prior to the blowing of the whistle.

Mr. SNOW: Second whistle?

A. Prior to this time, and he replied that he could let go the anchors, so that I felt no further apprehension on that point.

COURT: Who is that you speak of?

A. The officer of the deck; the officer of the deck with me; the officer of the barge, the oil barge. There was an officer supposed to be on watch at all times, and that was his position. Still the *Samson's* course didn't seem to alter, and there were some—it appeared to me at that point there would be some danger of us getting together. So I ordered the helm of the barge hard to port, and swung in for the shore, and told the man to stand by his anchor, and he disappeared and went below on this deck. I didn't see him any more.

Q. Now, right there, I will interrupt you to ask why you asked him to stand by his anchors.

Mr. SNOW: I don't think that makes any difference, your Honor.

Mr. ERSKINE WOOD: I think it does. I would like to have him answer that question.

COURT: Objection overruled.

A. After turning the barge to shore it would be impossible then to recover and get back here on the course again, without these anchors. That would be an utter impossibility, because the current catches the side of the barge and she is a heavy ship and the tow-boat wouldn't have had the power to turn her rig' again. It was absolutely necessary to use the anchors to keep her from going on the beach. That was the idea. The barge answered her helm promptly and swung rapidly towards the beach. The *Samson* came on past the bow, and I saw that the barge would clear, but she was going to catch the *Henderson* with

her tow. So I called to the pilot of the Henderson, the pilot house of the Henderson, and told him to stop and back with his helm to port, full speed. I saw the barge—the port barge of the tow of the Samson strike the bow of the Henderson just forward of the house; broke her adrift from the barge and left us free. I paid no further attention, of course, to that part, but immediately ordered the man below to let go his anchors, which was promptly done, and I think they were not more than thirty seconds, or at the outside forty seconds, between the time of the crash, the two boats colliding, and these anchors were on the bottom. That is my opinion.

Q. How did your oil barge come up upon her anchor chains?

(Questions unanswered.)

Proceedings herein were adjourned until 1:45 P. M. Tuesday, January 7, 1913, 1:45 P. M.

Mr. C. E. S. WOOD: May it please the Court, we have two witnesses who were on the oil barge at the time, and whose testimony was to be taken by deposition, but the barge arrived in town this morning, and leaves here at seven o'clock tomorrow morning, and we prefer—in fact, the rule requires that if we can, we take their depositions orally before the Court. And to enable them to get away on their trip, we would like to interrupt Captain Sullivan's testimony and put these two men on the stand.

ALEXANDER MARTINSON, a witness called on behalf of the libellant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Martinson, what is your business?

A. I am boatswain.

Q. I didn't understand you.

A. I say I was boatswain.

Q. What is your regular business now?

A. Sailor.

Q. How long have you been a sailor?

A. About for 30 years.

Q. In what parts of the world?

A. All parts of the world.

Q. Were you on Oil Barge 93 at the time of the collision with the *Samson* and her rock barges?

A. Yes, sir.

Q. What position were you in then?

A. I was boatswain at the time.

Q. Where were you on the oil barge?

A. I was on the forecastle head—forecastle head.

Q. What were your duties there?

A. Well, I was assisting the pilot. I was keeping look-out, you know, along with the pilot.

Q. How long had you been on watch—do you remember?

A. Just about an hour and a half. I came on watch at 12 o'clock.

Q. What orders did you get from Captain Sullivan about letting go the anchors of the barge?

A. Well, the only thing what I remember, that is when he sung out "Let go the anchor," and I let these

anchors go. That is all I can remember. That is a long time ago.

Q. Well, tell me what you did, how you let go the anchors.

A. Well, there is just a round wheel you have, kind of compression, and you just open that up a little bit and the anchor goes right down.

Q. Where were you when he sung out to let go the anchor?

A. Well I was about amidships; about 40 feet away somewhere, from the anchor.

Q. About 40 feet away from the anchors?

A. Yes, about 40 feet away at the time he sung out.

Q. And what deck were you on?

A. On the main deck at the time.

Q. How did you happen to be on the main deck? That wasn't your regular position, was it?

A. No, sir, but when I saw there was going to be a collision, I went off the forecastle head, and went down on the main deck, and I had in my mind to go and close those water-tight doors.

Q. How quickly did you let go the anchors in regard to the time of the collision?

A. That is only a matter of second, you know. About 20 or 30 seconds, something like that; only made a couple of jumps and I was right there, and opened up and the anchors went right down. That is only a matter of a few seconds.

Q. How many anchors did you let go?

A. Let go first the starboard, then I went over to the other side, the port, afterwards.

Q. How did they go out—fast or slow?

A. Well, they go out fast, you know; when we open up, they go out fast.

Q. And after the anchors hit the bottom, how do the chains go out?

A. That depends on the headway of the ship. If the ship's got much headway, go fast. If the ship got slo wheadway, go slower.

Q. How did they go this night?

A. Slow.

Q. This night, after the anchors hit the bottom, the chains went out slow—is that right?

A. Yes, sir.

Q. Did the oil barge have much headway that night, at this time—at the time you let go the anchor?

A. I don't think so. Very little headway.

Q. Do you know how much anchor chain you had out?

A. I couldn't tell. I don't know.

Q. Where was the barge in relation to the shore, when she lay at anchor—when daylight came?

A. Was pretty close on the Oregon shore.

Q. About how close?

A. Well, I couldn't tell you exactly the distance, but I don't think there was room enough for a barge to swing without touching the shore, in my estimation.

Q. You mean she would be less than her own length from the shore?

A. Yes, I think something like that, because I don't think there was room enough to swing.

Q. Had she moved any from the time the anchors held her, after the collision, until the next morning?

A. No, sir, she hasn't moved any.

Q. When the oil barge came up on her anchor chains, did she come up with a jerk, or did she come up easy?

A. Very slow. No strain on it at all.

Q. Mr. Martinson, I notice you are limping to-day?

A. Yes, sir.

Q. When did that happen?

A. Oh, that happened now in Frisco, last trip. A piece of ice fell on my foot.

Q. At the time of the collision you were not lame, were you?

A. No, no, I was all right.

COURT: You stayed on the barge all the rest of that night?

A. Yes, sir, your Honor.

Q. Mr. Martinson, do you remember the orders that were given about the helm before the collision?

A. Yes, sir, I remember.

Q. What were they?

A. Well, after we blew the first signal, one whistle, the pilot told me the man at the wheel to port his helm, which he did, and the ship answered the helm

right away.

Q. And swung towards which shore?

A. On the Oregon shore.

Q. The Oregon shore?

A. Yes, sir.

Q. And what other orders were given about the helm?

A. Well, there was another order given after the second whistle—hard aport. And the pilot say to the Henderson to port her helm, back her, something like that. I don't remember exactly.

Q. Said that to the Henderson?

A. Yes, sir.

Q. Do you remember how your oil barge was headed after the order to put the oil barge hard aport?

A. Was headed to the Oregon shore, right in, right for shore.

Q. How far away did the shore seem to be?

A. Well, it was dark. I thought we was on shore already, the way it looked to me in the dark.

Q. You thought you were getting too close to shore?

A. Yes, I thought we were on shore already, the way it looked to me.

Q. Where did you seem to be pointing after your first whistle?

A. Point towards the Oregon shore already.

Q. What part of the Oregon shore?

A. Well, I am not acquainted there. I don't know any name.

Q. Well, did you notice anything on the shore that would indicate what part you were pointing to?

A. Well, no. It seems was high land there, you know; something high there.

Q. A high land?

A. Yes, sir, high land. That is where we was pointing to.

Q. That is where you were pointing?

A. Yes, we were pointing for that high land.

Q. That was after the first signal?

A. Yes, sir.

Q. And after the second whistle, when the helm was put hard aport.

A. We was pointing right towards land, right into it. I don't know. I couldn't tell you exactly; it was dark, and I couldn't say much.

Q. Do you know anything about the range lights?

A. No, sir, I don't. I am not acquainted with them.

Q. Do you know which rock barge hit the Henderson? Could you say anything about that?

A. Well, I tell you, that all went so quick I hardly can tell and remember, you know. It was dark, you know. No, I couldn't tell that.

Cross-examination.

Questions by Mr. MINOR:

Where were you at the time the first order to port the helm was given?

A. I was in the forecastle head.

Q. To whom was that order given?

A. To the man at the wheel.

Q. To whom?

A. The man at the wheel, the quartermaster you might call him.

Q. Now, how long was that order given before the second one was given, or rather, whistle? How long was the order to whistle before the second order to whistle was given?

A. Port your helm? Well, a few minutes.

Q. The first order to whistle—after that first whistle, he ordered the quartermaster to port the helm?

A. Yes, sir.

Q. And after the second order—after the second whistle, he ordered him then to put it hard aport?

A. Yes, sir.

Q. How long was it between the two orders? Between the two whistles, in other words.

A. Between the two whistles?

Q. Yes.

A. I don't know. Three minutes or something. Three or four minutes between the two whistles.

Q. Three or four minutes?

A. Four minutes, something like that.

Q. You were look-out, were you?

A. Sir?

Q. You were look-out, were you?

A. Yes, I had nothing particular to do. I had to just assist the pilot there, and see that the orders were

obeyed that he gave, you know, to the man at the wheel, and so on. That was all I had to do.

Q. You were look-out on the barge?

A. Well, I had some kind of look-out, but I had no responsibility in the look-out part, you know. I was just there, you see.

Q. Did you see the Henderson at the time the first order was given—did you see the Samson at the time the first order was given?

A. Yes, sir, I saw her long before that.

Q. Saw her long before that?

A. Yes.

Q. How long before that did you see her?

A. I saw her about four or five minutes, something like that, I think.

Q. Four or five minutes before that?

A. Before the first whistle was blown.

Q. And that was the first order given after you saw the Samson?

A. After we saw the Samson, the order was given from the pilot—after the pilot saw the Samson, you know, he told me to blow one whistle, which I did.

Q. That was about four or five minutes after you saw the Samson?

A. Yes, sir, was a little after I saw the Samson.

Q. Who blew the whistles, you? Did you blow them?

A. I blew the whistle.

Q. So four or five minutes after you first saw the Samson, you blew the first whistle?

A. Yes, sir.

Q. Now, did you blow the second whistle?

A. Yes, sir.

Q. And you blew that four or five minutes after you blew the first one?

A. No, about three minutes, something like that, three or four.

Q. About how many?

A. Three or four minutes.

Q. Three or four minutes?

A. Yes, three minutes, four minutes, something like that. I can't remember exactly.

Q. Could you tell how far the Samson was away when you blew the first whistle?

A. Well, I think it was a mile, something like, a little bit less.

Q. Could you state how far the Samson was away when you first saw her?

A. Well, she was a good bit away then. I couldn't tell exactly how far she was; could see those lights.

Q. Could you tell how far she was away at the time you blew the second whistle?

A. Then she was getting pretty close. I can't remember how far, exactly the distance.

Q. How close?

A. Well, that is a thing I couldn't tell you exactly how close she was.

Q. She was getting so close at that time that you had become alarmed, hadn't you?

A. What you say?

Q. She was coming so close at that time that you had become alarmed for fear there would be a collision, hadn't you?

A. Yes, after we blew the second whistle.

Q. But before you blew the second whistle you had become alarmed, hadn't you?

A. No, not then, no, sir.

Q. Hadn't up to that time?

A. No, sir.

Q. Hadn't Captain Sullivan gotten alarmed at that time?

A. I don't know whether he got alarmed. I don't know.

Q. Don't you remember that before you blew the second whistle, Mr. Martinson, that Captain Sullivan said in your hearing—

COURT: I think maybe the witness misunderstands you about the word "alarm."

Q. I mean, didn't you get afraid or scared that the collision was going to occur, before the second whistle was blown?

A. No, no.

Q. Didn't Captain Sullivan become scared before the second whistle was blown, that there would be a collision?

A. I couldn't tell you anything about that.

Q. Do you remember that before the second whistle was blown, Captain Sullivan said in your hearing: "That man don't seem to alter his course." He says, "Give him another whistle."

A. Yes, sir, that is quite correct. I remember that.

Q. You remember that, do you?

A. Yes, sir, that is what the pilot said.

Q. Now, did you go down to close the water-tight compartments before or after the second whistle?

A. After the second whistle.

Q. How long after the second whistle?

A. Well it was only a matter of a short time, you know.

Q. Well, I know, but how long, about?

A. Well, that is something I couldn't say exactly. I cannot judge the time of that collision. It all went so quick, you know, I can't remember those things in particular.

Q. Went down right away, didn't you?

A. After I blew the second whistle, yes, sir, and I saw the boat was coming too close, and I thought there was going to be a collision, so went down on the main deck.

Q. Now, you say you heard Captain Sullivan tell the man on the Henderson to port his helm and to back?

A. Yes, sir, I heard that.

Q. When did he tell that to the pilot of the Henderson?

A. That was after he blew the second whistle.

Q. After he blew the second whistle?

A. Yes, sir.

Q. How long after?

A. Well, about right away after that, you know, a few seconds.

Q. Was that before or after you went down?

A. That was before I went down on the main deck.

Q. Before you went down on the main deck.

A. Yes, sir, I was on the forecastle head at the time.

Q. Where was the Samson at that time when you went down on the main deck?

A. Well, she was on our port bow.

Q. How far away?

A. Well, that I couldn't tell you.

Q. And neither barges had passed you at that time?

A. What is that?

Q. Had any of the rock barges passed where you were standing at that time?

A. They all were there tied up to the boat. They all was in a bunch there.

Q. I say, had any of the rock barges in front of the Samson passed where you were standing at the time you went down below?

A. No, sir, not at the time when I went below. I saw them come right on top of us. That is the time I went down on the main deck.

Q. None of them had passed you at that time?

A. Not me.

Q. Were you standing front or behind Captain Sullivan?

A. Behind Captain Sullivan.

Q. How far?

A. I don't remember the distance.

Q. About how far?

A. I was walking around. I couldn't tell you the distance. I don't stand in one place all the time, just keep moving around.

Q. Had any of these barges passed Captain Sullivan at the time he gave that order to the Henderson?

A. I couldn't tell you that.

Q. Well, he gave that order before you went down on the main deck?

A. Yes, sir, gave that order; gave the order to the Henderson to port their helm and back her, before I went down on the main deck.

Q. Before you went on the main deck.

A. Yes, sir.

Q. And you can't tell me exactly how far the Samson and her barges were away from you at that time?

A. No, sir, I can't.

Q. None of them had passed you?

A. No, not me.

Q. And you can't say whether any had passed Captain Sullivan at that time or not?

A. No, sir.

Q. How do you go down from the forecastle deck to the main deck?

A. A couple of steps there, a ladder there, and you go down a couple of steps, four or five steps.

Q. Are those steps in front of where Captain Sullivan was standing, or behind him?

A. Behind him—that depends on how turned around. If he turns toward forward, you know, would be behind. If he was facing aft, they would be in front.

Q. Were they further forward on the barge than Captain Sullivan was, or were they further aft?

A. Which? The steps?

Q. Yes.

A. I don't understand that very well.

Q. Do you know where Captain Sullivan was standing?

A. Yes, sir.

Q. Now, were those steps aft of where Captain Sullivan was standing, or in front—further toward the bow of the barge than where Captain Sullivan was standing?

A. Those steps are abaft of the bow of the ship, you know.

Q. Then they are further forward than where Captain Sullivan was standing, are they?

A. No, they are further aft than where Captain Sullivan was standing.

Q. Further aft than where Captain Sullivan was standing?

A. Yes, sir.

Q. How much further aft?

A. That is what I told you before. I don't know exactly where he was standing at the present. He

was walking around. I was walking around, so I didn't look at those things.

Q. Those steps come down at the back of the forecastle deck, do they?

A. Yes.

Q. Not at the front of the forecastle deck?

A. No, they come abaft of the forecastle deck.

Q. Abaft of the forecastle deck?

A. Yes, sir.

Q. Did you hear any other signals given beside what you have stated—just the two whistles?

A. Well, at the time the collision just occurred, a little bit before that, a few seconds, I couldn't tell exactly the time, but the Henderson she was blowing some signals, too, but I didn't pay much attention to what she was doing.

Q. Was it after you went down on the main deck?

A. It was just at the time I went down on the main deck.

Q. At the time you went down on the main deck?

A. Yes, about that time.

Q. You blew all the signals which were blown from the barge, did you?

A. Yes, sir.

Q. And the barge didn't blow any danger signals at all?

A. No, sir.

Q. Now, you say that the Henderson blew this signal before or after the collision?

A. What signals do you mean, sir?

Q. The danger signal, you say?

A. That was just a little bit before the collision, you know.

Q. Now, I call your attention to your deposition taken here on the 2nd day of August, 1912, in which you say, the Henderson was blowing danger signal.

“Q. When did she blow it? A. Just when we bumped. Q. Not until then? A. Sir? Q. Not until just at the collision? A. Yes, no, just at the collision.”

A. Well, just as I said, it was just about the same time. It was a matter of seconds, you know, it happened, and I don't remember those things. It is now about a year and a half ago, and I don't remember those things, but just as I said, she blew the signals just about the time. There was not many seconds apart when it all occurred.

Q. Was it at the time of the collision, or before the collision, or after the collision?

A. It was just a little bit before the collision, before she struck the Henderson, when the Henderson blew those signals. That is as near as I can come to it.

Q. You remember when the deposition was taken, don't you? You remember when your testimony was taken in this case before, don't you?

A. Yes, sir, I remember that.

Q. Now, at that time didn't you testify that it was just at the collision?

A. Well, now, I can't remember. It was all about

the same time. It was just a matter of a few seconds, or a half a second, you know. It was just a few seconds. I don't remember exactly, so I couldn't say about those little things. You know it all went so quick.

Q. Did you answering this question "Not until just at the collision?" say, "Yes, no, just at the collision"?

A. Well, as I say now, it was just at the time or a few seconds before; just when it occurred, at the same time, you know.

Q. Is that what you swore to before?

A. Well, I—what I said before, and what I say now, that is as near as I can come, and that is the truth as I say, and that is all I can judge by. That is all I know.

Q. When you were examined in this case before, didn't you, in answer to this question "What signals, if any, did the towboat give after the collision", say, "Well, the Henderson was blowing danger signals"? And to the question "After the collision", say "Yes, sir"; and in answer to the question "You don't remember her giving any signals before the collision?" say, "No, I can't remember that." Isn't that what you swore to before?

A. Well, I said like before; just exactly the same as I said now. You know that is as near as I can get to it, in the way you pick these things out.

Q. I don't want to deceive you, Mr. Martinson. Here is a copy of what this deposition was. I wish

you would read from here down to there (indicating) and state whether the answers you gave then were correct, or whether the answers you give now are correct. I call your attention to the parts of the deposition which I read to you awhile ago.

COURT: What page of the deposition is that?

Mr. MINOR: Page 21, your Honor, of the copy which I have.

A. Well, yes. I don't—yes, that is as close as I can get.

COURT: Speak louder, so every one can hear.

A. Well, those things the way I read them can be understood, you know, different ways, your Honor, the way I read this.

Q. Well, you did testify, then, when you were examined before, which examination took place the 2nd day of August, 1912, as follows: "Q. What signals, if any, did the towboat give after the collision? A. Well, the Henderson was blowing danger signals. Q. After the collision? A. Yes, sir. Q. You don't remember her giving any signals before the collision? A. No, I can't remember that." That is what you testified before?

A. Well, before the collision, I understand that is a few minutes, or something, before, but it all went so quick at once, you know, and when the boat was coming bump against her, she blew the signals, some kind of whistles. I don't remember what she blew, because my mind was occupied with something else. And I said there just as it is now.

Q. That is the way you testified before, just as I read it to you?

A. Yes, that is here, you can take it up which way you want to. That is as near as I can come.

Q. Was the statement you made at that time correct, or the statement you make now?

A. I think correct now, and the last time, as I said, it was as near correct too. It is which way you take it about those things. It all went so quick, in a hurry, that there wasn't many minutes between it.

Q. Now, Mr. Martinson, you think she began blowing danger signals before the collision?

A. Well, that is—

Mr. SNOW (Interrupting) No, he doesn't say that.

A. (Continuing) A second or two before.

Mr. SNOW: I object to that. You are assuming a fact not proven in this case. He hasn't so testified.

COURT: Pursue your cross-examination.

Q. You said awhile ago that the Henderson blew some whistles just before the collision—just as you went down on the deck?

A. Yes, sir, that is what I remember. Just when she was going bump into us, she blew the signals.

Q. You said that was before the collision took place?

A. A second or so after; a second or so before the collision took place; that is as near as I can tell.

Q. When you testified before in this case, you testified that you didn't remember her giving any signals before the collision.

A. Before the collision, you know ; a long time before the collision. She didn't give any signals, you see, three or four minutes, two or three minutes, before the collision. She didn't give no signals then.

Q. As a matter of fact, did she give these signals before or after the collision took place?

A. Well, just about at the time, you know ; a little bit before it, you know.

Q. A little before?

A. Second or so.

Q. So when you testified before, you were incorrect in saying she didn't give any signals before the collision?

A. Well, just before the collision—just the same as now.—As I said, you know, just about the same time as the collision occurred ; a little bit before that, why, she gave the signals. That is as near as I can come to it.

Questions by Mr. SNOW:

Mr. Martinson, you say that the Henderson was giving some distress signals some little time after the collision? What did you mean by distress signals?

A. She was blowing her whistle, you know. I couldn't say exactly. As I said before, I didn't pay much attention what signals they were, in fact, you know, because my mind was occupied with something else, but I know she blew some signals, you know, whatever it was, you know. It all went so quick ; in fact, she didn't have much time to blow her signals before she disappeared.

Q. After the collision, as I understand you, she blew a few distress signals?

A. Yes.

Q. What do you mean by distress signals? What do you mean by that?

A. Well, four blows, you know, we call, you know, what we call distress signal.

Q. Where was the Henderson then with reference to the oil barge? The oil barge was it anchored. Where was the Henderson when blowing the distress signal?

A. She was blowing signals when she was alongside, just the time when she—all got quiet at once—didn't have no time to blow those whistles.

Q. That is what you mean by after the collision. You mean when she was still alongside there, and before she had finally broken loose from the barge?

A. After she broke loose from the barge, I don't remember whether she blew any whistles or anything like that. It all went so quick.

Redirect Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Martinson, I don't expect you to name it in minutes, but I want to know whether it was a long time or a short time before the collision, that Sullivan gave the order to the Henderson to port her helm and back. Was that a long time or a short time?

A. That was very—oh, a short time; it wasn't very long, you know. It was after I blew—after we

blew the second whistle, you see. Then he says at the same time, he says, to port your helm and back her to the Henderson, or hard aport, or something like that. I don't remember exactly.

Q. How close did the Samson appear to be upon you at that time?

A. Well, she was pretty close then, but the distance, as I said before, I couldn't tell you.

Q. Did you notice the Henderson after the collision?

A. No.

Mr. MINOR: I didn't ask anything about that. You can go into it if you want to. I didn't cross examine him on that. I have no objection to your going into it if you want to.

(Witness excused.)

CHARLES KAYSER, a witness called on behalf of the libellant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

What is your occupation?

A. Seaman.

Q. How long have you been a seaman?

A. About 12 years.

Q. How long have you been on the oil barge?

A. 20 months now.

Q. You were on her at the time of this collision with the Samson?

A. Yes, sir.

Q. Where were you on the oil barge at the time of the collision?

A. In my bed.

Q. What woke you up if you were asleep?

A. The crash of the Samson running into the Henderson.

Q. Had you heard anything else before that?

A. I heard our whistles. I heard one whistle and then fell asleep again, and heard another whistle shortly after that. I fell asleep again after the second whistle.

Q. You were just half asleep there?

A. Yes.

Q. And the crash woke you up?

A. Yes.

Q. Then what did you do?

A. I jumped out of bed, half undressed and run up on deck. I thought we were on the rocks or something, and when I was running out, Martinson came running in, and we ran to the anchors, and I asked what was the matter, and he didn't answer me. Just went for the anchor and let go the starboard anchor and then the port, before I saw the Henderson drifting to stern, she was sinking.

Q. How far had you ran from your bunk to where you met Martinson?

A. About 18 or 20 feet.

Q. And Martinson was running in? Is that it?

A. Yes.

Q. How soon would you say it was the anchors were let go after the collision?

A. Oh, it was only a matter of seconds. Just the time it took me to run out from my bunk, to run these twenty feet and for Martinson to run for the anchors.

Q. How far did he run to the anchors from the point you met him?

A. Probably 25 feet.

Q. How did the oil barge come up on her anchor chains?

A. Very slow. I noticed that when the starboard anchor was down, I could just watch the chain going out. I think Martinson left the brake open, and the chain could hardly go out any more.

Q. Hardly go out any more after the anchor hit the bottom?

A. After the anchor was on the bottom.

Cross-examination.

Questions by Mr. MINOR:

How many whistles did you hear that night?

A. I heard all the whistles. The two whistles the barge blew, the one and then another one.

Q. Only heard two?

A. Yes.

Q. What time did you go to bed?

A. 12 o'clock.

Q. Twelve?

A. Yes, sir.

Q. You didn't hear any whistle blown before you

heard this whistle that you said—

A. (Interrupting) No, sir.

Q. (Continuing) was blown for the Samson.

A. I don't remember any.

Q. You always wake when the whistle blows, don't you?

A. What?

Q. You always wake up when the whistle blows?

A. Yes, the whistle is just above us; that is, our whistle. I don't hear the Henderson's whistle.

Q. Do you know where you were in the river at the time you went to bed?

A. What?

Q. Do you know where you were in the river at the time you went to bed?

A. No.

Q. You are not acquainted with the river. Do you remember passing any boat about the time you went to bed?

A. No.

Q. Or a little after?

A. No.

Q. You don't remember any whistles at that time?

A. What?

Q. You don't remember hearing any whistles at that time?

A. No.

Q. You don't remember two whistles being blown?

A. No.

Q. After you went to bed?

A. No. Might have been blowing some whistles, but I didn't pay no attention to them. We meet steamers quite frequently on the river.

Q. What is that?

A. I say we meet steamers quite often on the river coming up, so I don't pay any attention to the whistles.

Q. If two whistles were blown just before you heard the first one, wouldn't you have heard them?

A. I suppose I would.

Q. You don't remember hearing them?

A. No.

Q. You didn't hear any answers to these signals?

A. No.

Q. No answer at all?

A. No.

Q. You weren't really awake, were you?

A. I was what?

Q. You were not really awake, were you?

A. No, just drowsy.

Q. You couldn't say whether one or two whistles were blown at the time, could you?

A. Yes, I can hear that distinctly.

Q. What?

A. I can hear that, one or two whistles.

Q. Why did you fail to hear one, and hear only the last one of the two blown?

A. No.

Q. Why not?

A. The steam whistle is too close. I don't think that is 25 feet away from my bed.

Q. Now, if the barge blew two whistles a short time before, in passing another steamer, and those didn't wake you up, isn't it possible that you failed to hear the first—the first whistle that the barge blew when she blew two whistles?

A. Maybe I wouldn't have paid no attention to those two whistles that were blown, this one and then the other one, if it hadn't been for the accident, because shortly after the second one I got up, and I remember.

Q. Now Mr. Martinson testified that between the time of the first and second whistle was about three or four minutes.

A. Probably. I can't tell.

Q. You can't tell. But you had gone to sleep between the two, had you?

A. Just drowsy, just half asleep.

Q. Did you hear anything else except these two whistles?

A. If I remember right, I heard some whistles, I don't know who blew them, the Henderson or the Samson, after—I think it was when I got out of bed, when I jumped out of bed.

Q. Did you hear the crash?

A. Oh, sure. The barge was shaking.

Q. You heard that, did you?

A. Sure.

Q. Did that crash occur before or after you got out of bed?

A. That crash woke me up, and I jumped out.

Q. The crash occurred before you got out of bed?

A. That was the thing that woke me up.

Q. You say it occurred before you got out of bed?

A. Yes, sir.

Q. Now, did you hear any orders given?

A. No, but I think I heard the pilot sing out "Let go the anchors" when I got up.

Q. After you got up?

A. Yes.

Q. Was that after or before you saw Mr. Martinson?

A. It was before I saw him.

Q. Before you saw him?

A. Yes.

Q. But that was after the crash?

A. Yes.

Q. And that was the only order you heard given at all?

A. Yes.

Redirect Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Kayser, how close to the Oregon shore was the oil barge at anchor?

Mr. MINOR: This is another matter. If you go into that, I have a right to cross-examine.

A. I don't think it was a ship's length off.

Q. Where do you think the point of collision was, with relation to the spot where you were at anchor?

A. It must have been close to there.

Recross Examination.

Questions by Mr. MINOR:

You don't know where you were when the collision took place, do you?

A. No, just what I could guess by the way we were anchored.

Q. And you only guess where the point of collision was from where you found yourself anchored?

A. What?

Q. You only guess where the collision took place from where you found yourself anchored?

A. Yes, I judge by the way the chains went out. If she had had much headway, we would have been more off, and the chains would have been drawn out.

Q. I say, you are only guessing from where you found yourself anchored?

A. Yes.

Q. Have no other means—

A. No.

Q. (Continuing) Of knowing where the collision took place?

A. No, I didn't see it.

Q. And you have no means of determining how long after the crash before the anchors were let down have you?

A. Oh, yes.

Q. What means have you of telling?

A. It took just time to jump out of bed and run up to the door, and Martinson to run in, so that it was all a matter of a few seconds, how many seconds

I couldn't tell.

Q. Did Martinson run in the room where you were?

A. No, he run by that.

Q. Ran by where you were?

A. Well, he ran by the room; that is, where we sleep at.

Q. He ran by that room?

A. Yes.

Q. How far by that room?

A. I think the anchors are about six or eight feet, maybe from my bed; that is, to the brake.

Q. In another room, though, is it?

A. No, under the forecastle head.

Q. Underneath where you were?

A. Yes.

Q. Did you see him run by?

A. Sure. I just see him at the door. I ran to the door to look out on deck, and he came rushing in and ran by me.

Q. He didn't rush in the room where you were, did he?

A. No.

Q. That is what I wanted to get at. He ran by the door where you were?

A. Yes.

Q. Just when he ran by the door, you were standing at the door, were you?

A. Well, I was just going toward the door.

Q. You didn't undertake to make any time upon

the time of the crash, or the time he ran by, or the time the anchors ran by, do you?

A. Well, as I said, it was a few seconds.

Q. You didn't time it at all, did you?

A. What do you mean?

Q. Did you have a watch?

A. No, I had no watch in hand.

Q. And you didn't make any particular reckoning of the time, did you?

A. No, but I can judge how long it takes me to run up to that door, and how long it takes him to run to the anchor.

Q. Can you tell how many seconds? You said a few seconds.

A. Oh yes.

Q. How many?

A. Well, it can never have been more than thirty seconds.

Q. Wouldn't have been more than thirty seconds?

A. No, and that allows a few minutes for him to run in from deck.

Q. Allows how much?

A. A few seconds for him to run in from deck.

Redirect Examination.

Questions by Mr. ERSKINE WOOD:

I think we should understand the relation of this room. Explain how your bunk was located on this ship with reference to the fore-castle, where the anchors are, and whether or not there are two doors.

A. You see the fore-castle head is the fore part of

the ship, and the anchor is located right in the middle. That is, the windlass, and our room is on the star-board side, so in order to get to the windlass, we goes off quarter like to the starboard side in order to get the windlass after we run by that door.

Q. By your cabin door?

A. Yes, the door I mean where I met Martinson, is the door leading from the after part of the fore-castle head to the main deck.

Q. Then you mean you ran out of your bunk-room?

A. Yes.

Q. Through the door which leads from the main deck into the forecastle?

A. Yes.

Q. And that is where you met Martinson?

A. That is where I met Martinson, yes.

Q. And how far is it from the door of your cabin to the door where you met Martinson, approximately?

A. Fifteen feet. I don't know whether fifteen feet.

Q. And from the door where you met Martinson, how far to the anchor windlass?

A. About ten feet.

(Witness excused.)

CAPTAIN EDWARD SULLIVAN resumes the stand.

Direct Examination Continued.

Questions by Mr. ERSKINE WOOD:

(Last question read as follows): How did your

oil barge come up on her anchor chains?

A. Apparently there was no jar.

Mr. MINOR: I didn't hear that.

A. Apparently there was no jar to the ship when coming up on these chains; none that I heard.

Q. What does that indicate, Captain?

A. It indicates that the boat had lost the greater part of her headway, or all of her headway, practically, because as heavy a vessel as that is wouldn't be very easy to stop; if she was moving, it would make considerable motion on these chains if she had any motion.

Q. Bring her up with a jerk, is that it?

A. Yes, sir.

Q. About how far were you, Captain, from the Oregon shore, when you came to anchor?

A. Well, I estimated to be 150 feet from the stern of the barge to the trap, the old piling which was there, which is near the water line. Of course sometimes when the tide is high, the water line is a little further away than others. But that was near the water line, and I estimate 150 feet from the stern of the barge.

Q. Will you indicate on this chart the position in which you think you lay to the anchor? (Libellant's Exhibit 1).

A. The next morning the anchors—this is a little tide land here, and this is the rock shore. It ends here. Our anchors were abreast this tide land, about, and the barge lay astern, and I think this trap piling

is possibly in this direction, allowing that for about the scale (indicating). That is to say perhaps 80 feet from the anchors to the bow of the barge, allowing for slack of the chain, and the chain laying on the bottom, and then the length of the barge would be another 280 feet, that would be maybe, 350 feet from the end of this tide land down here, to her stern.

Q. Well, mark that with a cross, the point where you think the oil barge lay at anchor. (Witness does so.) The cross immediately to the left of the words "oil barge at anchor" with the initials "E. S." under it, represent your idea of the position of the barge when she lay to the anchor?

A. Yes.

Q. What would be your idea as to the distance the oil barge traveled from the time of the collision to the anchorage place, if she traveled any?

A. I think possibly less than her length—than once her length.

Q. That would be less than 280 feet?

A. Yes.

Q. Did she move any between the time of coming to anchor there, and the next morning?

A. She did not.

Q. What became of the Henderson, Captain?

A. Well, as far as I could see, she drifted down in the direction in which the channel ran; I should think in a straight line, but of course, only lasted a few minutes until the lights went out, then I couldn't see her any more; too dark; and she drifted off down the

channel about in the general direction of the channel towards this way the current runs.

Q. Did her lights go out soon?

A. Yes, very soon. It wasn't more than, it seems to me, two or three minutes, a very short time, going out. We launched the boat, the captain of the barge did, immediately after the anchors were down, and sent to their rescue, but it seems before he got there, the boat got there, the fishermen picked them up.

Q. Can you identify on the chart the approximate position of the Henderson when you saw her the next morning, the point where she drifted to? (Witness indicates). Mark that "Henderson aground."

Mr. SNOW: Is that where the Henderson sunk?

Q. That is, she was almost directly between the uppermost point of Tenas Illihee Island, and the lower point of Puget Island?

A. Yes, sir.

Q. And on the Oregon side of the river?

A. Yes, sir.

Q. How does the oil barge steer, Captain?

A. It steers very good.

Q. Obeys her helm readily?

A. Yes, sir.

Mr. C. E. S. WOOD: How was it that night?

A. Sir?

Mr. C. E. S. WOOD: How did she steer that night?

A. She steered well. She steers well all the time.

Q. Captain Sullivan, were the lights on the barge

and the Henderson burning regularly according to the rules that night?

A. Yes, sir.

Q. Captain Sullivan, what is the width of the channel there at the time, from the high bluff across to Puget Island?

A. I think about 1800 feet, I believe the chart so gives it.

Q. From what?

A. From the closest point.

Q. I mean, from the high bluff marked with a cross here, and just below it, where you came to anchor.

A. I believe that is 2500 feet.

Q. How is the water?

A. There is a little bar on the Puget Island side, perhaps 150 feet from the island, or such a matter; that, I think on that, is shallow, and beyond that there seems to be deep water all the way to the bluff. We were anchored in eight fathoms of water 150 feet from shore.

Q. Then it is practically deep water from shore to shore?

A. Yes, for any draft vessel excepting that narrow bar on the island.

Q. I will ask you mark that narrow bar on the shore there. Is that where is Ostervolt's seining ground?

A. Yes.

Q. Mark it that way.

A. This is the bar indicated by this dotted line in the chart where no soundings are taken at all, and extends about 150 feet. My idea is it extends out about 150 feet from the shore line, or the water's edge of this shore. Then beyond that point, all of this water is deep here, and at this point where we were anchored, there were eight fathoms of water, and all this channel seems to be deep, at least between here and here, except that little strip close to shore—deep water.

Q. How many sloughs indicated on the chart on the Puget Island side?

A. Three.

Q. Do you know whether there are some others or not?

A. I think there are. I think one or two more sloughs. I know of one more.

Q. Can you indicate where that one is?

A. I think there was one in the neighborhood of this old trap and one in between these two, I think.

Q. If you are not sure, don't mark it.

A. I am not sure.

Q. Then don't mark it.

Mr. SNOW: Mark the slough you are sure of. How about this one here?

A. I think that slough is there.

Cross-examination.

Questions by Mr. MINOR:

Captain Sullivan, I wish you would come here and

mark on this chart where you were when you gave the first signal to the Samson. (Witness marks on Libellant's Exhibit 1). Mark it as "first signal." Now, mark on that chart where the Samson was at that time.

A. (Indicating) Of course I can't locate her position in the river. I can only locate about the distance away. It might have been nearer one bank or the other. I couldn't tell that very well, so I will say there.

Q. Now, mark where the collision took place. (Witness does so). Now, mark where you were the time you gave the second signal to the Samson. (Witness does so). Now, mark where the Samson was at that time. (Witness does so). Now, lay out on that chart, if you please, the course which your barge pursued from the time that you first sighted the Samson to the time that the collision took place.

A. This, I suppose, is the starting point.

Q. There, right there you have it.

A. (Drawing on Libellant's Exhibit 1) This is my understanding. I will change that a little bit. I will make that a little further in this direction.

Q. Now, Captain, you say the Samson was about a mile and a half from you when you first saw her?

A. I think so.

Q. And you say at the time you were at a point you marked here, marked with a cross on this chart?

A. Yes, sir.

Q. Do you remember testifying in this matter be-

fore the Inspectors for the United States?

A. I do.

Q. Where did you locate yourself in that examination?

A. (Indicating) At this point, about.

Q. Right off the lower point of the island, did you?

A. Yes, sir.

Q. Now, you make yourself further upstream, do you?

A. Yes, sir.

Q. Why do you do that?

A. Well, at the time of this examination, I made this statement, of course, following this collision; it occurred in the night, and I had no opportunity to observe the situation by daylight, or, in fact, no opportunity at all to observe it up to this time. My recollection of the position we were in was based on the fact of seeing the lights at Cathlamet, which are in here, and I was under the impression they could only be seen from a point below the foot of this island. Now, of course, I didn't notice when I passed this island, or in fact, at any time, on account of seeing these lights of the Samson; I didn't locate myself exactly, because there was no reason or occasion for doing such a thing; so I remembered in looking back at this range and seeing these lights, and seeing the Samson, so I concluded that this was the point, because I thought the high trees on this island extended down to the point. And passing that, that a man on

the bridge of a ship, his view would be shut out of these lights; but when I looked again in day light, I found that the trees are a long way from this point, a long way from this point to where the trees are; and that is covered with low brush, over which these lights can be seen. Then when I calculate the distance we would have to run from here to here, and look at it from that standpoint, I found it too great; that we couldn't have made it in the time I stated, at the speed we were going; and the Samson coming from here to here, at the speed they were going, we couldn't have met at that point, and I concluded I was mistaken, and I wish to correct that mistake now.

Q. At the time you testified before, you were pretty positive about where you were?

A. I thought I was.

Q. And that was your best recollection at that time?

A. Yes.

Q. And that examination occurred a short time after the accident occurred, didn't it?

A. And also this examination occurred a short time after the accident. A short time after the investigation, I examined that.

Q. I say, the examination which was made before the inspectors occurred a short time after the accident occurred, didn't it?

A. Very true.

Q. When the whole matter was fresh in your memory, was it?

A. Yes, but I say this was also fresh in my memory, because I examined those conditions a few days later than that.

Q. You could see the lights of Cathlamet from the foot of the island?

A. Yes.

Q. And up from that point?

A. Yes, sir.

Q. And why do you say you were mistaken when you testified before, and as a matter of fact you were there at a point you now mark, and not at the point which you said you were at the time you testified before the Inspectors?

A. I said I think I was mistaken.

Q. Why do you say that?

A. Because the distance from here to here (indicating) or from here to here is too great to travel in that length of time, at the speed we were going.

Q. The only reason you have now for changing your testimony in regard to your location and the Samson, is the fact that you found out, upon that examination, that the collision couldn't have taken place, if you were at the place where you said you were at the time you first saw the Samson's lights. Isn't that right?

A. It wouldn't hardly have taken place at that point.

Q. You found out it couldn't take place at that point?

A. I think so, yes.

Q. And now you are locating the position that you were from where you think the collision took place, are you not?

A. Yes, not based on memory of the present time, but on examination a few days later.

Q. And at the same time you are placing the position where you were when you first saw the light of the Samson from the place where you think the accident took place?

A. I am correcting that. I think I was mistaken.

Q. Yet, when you testified, Captain Sullivan at that time, you were quite as positive as to where you were, as you are now, weren't you?

A. Yes, I think so.

Q. And it was only when, upon cross examination you discovered that you were making your barge come as far as the Samson was going, that you thought you could be mistaken, wasn't it?

A. No; well, yes, that had something to do with it.

Q. That was developed upon cross examination of you, wasn't it?

A. Yes.

Q. And until that time you didn't recognize you were making your barge go as fast as the Samson was going?

A. Well, until that time I hadn't taken any measurements or computed distances.

Q. You had the chart before you?

A. Yes, sir.

Q. And you had the chart at the time you located the position?

A. But it didn't occur to me.

Q. But you located where you were at the time you first saw lights on the Samson on the chart, didn't you?

A. As I thought.

Q. And you located where the Samson was at that time on the chart, didn't you?

A. Yes, sir.

Q. And you located also where the collision took place on that chart?

A. Yes, sir.

Q. And you located where you anchored on that chart?

A. Yes, sir.

Q. And where the Henderson was on the chart?

A. Yes—no, I beg your pardon. Not on this chart. These charts were made afterwards. We used a smaller chart there.

Q. I thought it was the same?

A. No, this is a chart made on a larger scale, with this range put on it, and that chart the Court has is of a different scale with no range put on it, and a very much smaller scale than this. This was made by the United States Engineers at a later date, and wasn't in use at the time.

Q. The two charts are the same except the scale?

A. One is a larger scale, and would make a difference in computing distances.

Q. But I say it is the same chart except one is on a larger scale?

A. Yes, but it would make some difference.

Q. Then on that chart there, the one like the one the Court now has, you located yourself at all these different times, and located yourself at different places from where you now locate yourself?

A. Yes, I think you brought that upon yourself. I think you were the one that did it.

Q. Now Captain Sullivan, do you remember passing the Daniel Kern that night?

A. Yes, sir.

Q. Where did you pass her?

A. Well, I think we were about abreast of this bar here, this point, I think (indicating).

Q. You think you passed her about abreast of that sand barr?

A. I think so, yes.

Q. You remember passing her, do you?

A. Very distinctly.

Q. I wish you would state where you were located at the time. I wish you would mark on this chart exactly where you think you were at the time when you passed the Daniel Kern (Witness indicates on Exhibit 1). Now, there are two marks there. Which one is it, Captain?

A. This was a mark used for some other purpose.

Q. That is where you passed the Daniel Kern?

A. Yes.

Q. What is the other mark for?

A. That is the point we were arguing about just now.

Q. That other mark is the point where you testified you were when examined before?

A. That is the idea.

Q. Put that down on your chart, will you?

A. What will I say?

Q. "Point where I testified barge was when first sighted Samson." Do you know at what time it was when you passed the Kern?

A. No.

Q. Did that oil barge keep a log?

A. No.

Q. Do you know how long it was after you passed the Kern before you saw the Samson?

A. Not exactly.

Q. Well, how far was the Kern ahead of the Samson?

A. I couldn't say.

Q. Couldn't you state approximately how far it was ahead of the Samson?

A. I would think two miles.

Q. Two miles?

A. Yes.

Q. Now, if as a matter of fact, Captain Sullivan, the Daniel Kern was only, say, less than a mile ahead of the Samson—

A. (Interrupting) That is what he said.

Q. I say, if the Samson, as a matter of fact—

A. (Interrupting) No, it wasn't a matter of fact.

Q. I say, if, as a matter of fact, the Daniel Kern wasn't more than a mile ahead of the Samson, you must have seen the Samson before you passed the Kern?

A. No, sir. She must have been more than a mile ahead of her.

Q. What is that?

A. She must have been more than a mile ahead of her.

Q. Suppose she wasn't.

A. Why would you suppose such a thing?

Q. You know as a matter of fact, that the captain of the Kern says he wasn't more than a half a mile ahead.

A. Yes, I know, but I know, as a matter of fact, he didn't tell the truth.

Q. Now, I have a right to his statement in regard to where he was. If, as a matter of fact, now, he is right and you are wrong, and the Kern wasn't more than a mile ahead of the Samson, then you sighted the Samson before you passed the Kern, didn't you?

A. No, sir.

Q. Yet you say you were a mile and a half from the Samson at the time you first saw her.

A. Yes, and I think that the Kern was two miles ahead of the Samson.

Q. Two miles ahead of the Samson?

A. At the time that I saw it, I think so.

Q. Now, how far was it from where you placed

the Kern, where you passed the Kern, to where you were when you first saw the Samson?

A. Well, might be a quarter of a mile.

Q. A quarter of a mile?

A. Yes.

Q. On which side did you pass the Kern?

A. On the—on her starboard side.

Q. You passed her just opposite of the way you undertook to pass the Samson, didn't you?

A. I did.

Q. And you think the Kern was two miles ahead of the Samson?

A. I think so.

Q. Now, Captain, you have testified this time that before you gave the second whistle, you told the quartermaster, I believe it was, to look to his anchor, to stand by his anchor.

A. No, I didn't testify that, sir.

Q. What did you testify, Captain Sullivan?

A. I said, after I blew the second whistle.

Q. You told the quartermaster to stand by his anchors?

A. Stand by the anchors.

Q. The quartermaster doesn't testify that way.

A. No, he doesn't seem to remember, but I make the statement just the same.

Q. When you testified before, did you testify you gave that order to the quartermaster?

A. I think so.

Q. The boatswain. Did you testify you gave the

boatswain that order?

A. I think so.

Q. As a matter of fact, you didn't, Captain. At least, the testimony don't show you did. How do you remember now, and didn't remember then?

A. Possibly the matter was not brought out.

Q. You were asked at that time all the orders you gave, weren't you?

A. I think so, but perhaps that one particular point wasn't brought out.

Q. But you were asked, both on direct examination and on cross examination all the orders that you gave, weren't you?

A. Yes.

Q. That is a fact, isn't it?

A. I think I remember saying that I told him to stand by his anchors.

Q. But the evidence don't show it, Captain. Now, if the evidence doesn't show it, how did it happen that you didn't tell that when you were examined before, as one of the orders that you gave?

A. I don't know.

Q. Captain, what change did you make in your course after you sighted the Samson?

A. What change?

Q. Yes.

A. I hauled off to the right-hand side of the range. About, oh, a matter of 600 feet, perhaps, and ran in that direction parallel with the range until we met the Samson.

Q. You ran in that direction parallel with the range until you met the Samson?

A. Approximately, yes.

Q. You didn't give any other order until after you gave the second whistle?

A. Well, I don't know as to that, what orders. Of course, I would have to keep this man keeping the barges ahead steady; might be port and starboard, or different things, for he had to keep the head steady; I couldn't say.

Q. You don't remember giving any other order?

A. Not particularly, no.

Q. You didn't give any order to the helmsman to change your course at all when you blew the first whistle?

A. No.

Q. The only time you changed your direction was when you first saw the Samson's light, and then after you gave the second whistle? Those were the only two changes you made in your course, weren't they?

A. Yes, sir.

Q. Those were all the orders you gave?

A. Yes, all that I can recollect.

Q. When you gave the second whistle, or gave the order to give the second whistle, and the second whistle was given, you then ordered your helmsman to put his helm hard aport?

A. After the second whistle was given, yes, sir.

Q. And he did put his helm hard aport, did he?

A. Yes, sir.

Q. And I understood you to say that the barge obeyed her helm very well, steered well?

A. Yes, sir.

Q. So she went off to port pretty suddenly then, didn't she?

A. Yes, sir.

Q. Now, Captain, I wish you would look at this chart one minute, and explain to the Court this fact. You have marked a point here where you gave the second whistle; you marked a point where the collision took place; and you say that after the second whistle was given, you gave the order "hard aport," and that the barge obeyed her helm readily. Will you tell the Court, then, how this barge could have gone from the point where you gave the second signal, to the point of the collision with her helm hard aport?

A. I don't quite get your meaning. The idea you want me to convey to the court that this barge would turn around on a pivot, a ship 200 feet long?

Q. No, sir, I don't want you to give any idea at all. I want you to tell the Court how it was, if your barge obeyed her helm well, when you gave the order "hard aport," that seemingly, by the course you have marked on this chart, the oil barge went, not to starboard but to port? You marked the course from the point of collision, so it can't make any difference.

A. Of course, the distance there would only be given on a scale. The distance between these two points, I presume, if measured, would be a matter of 400 feet, but that wasn't the idea conveyed in mak-

ing these marks, that there was 400 feet difference between the point of this whistle and this collision. That wasn't the idea that I intended to convey. Of course, the boat was going ahead under full speed, pushing ahead with this towboat, and she would travel in a circular direction, not turning on a pivot; a vessel as long as she is wouldn't do that. So the idea would be that she would travel in that circular direction with head towards shore after the helm was put over.

Q. Well, after the helm was put over, instead of turning to the left, she ought to turn to the right, shouldn't she?

A. I don't know of anything said about turning to the left.

Q. Look at the course and see if she isn't going to the left still.

A. I think you confine me too close to the scale on the chart there.

Q. That is the way you put it down, isn't it?

A. Yes, that is the way it was put down.

Q. So that isn't the course really, is it?

A. Approximately.

Q. Then you haven't put the place where the second signal was given, on the chart correctly, have you?

A. Approximately.

Q. And you haven't put the place the collision occurred correctly, have you?

A. Approximately.

Q. Then, will you tell me how the oil barge could get from the place where the second signal was given to the place of collision with her helm hard aport?

A. No, I don't think that I can answer your question.

Q. Well, it is for you to answer to the court.

A. Perhaps, if I had anticipated such a question, where you would pin me down so close to these marks, I would have made them in a more accurate way. I am only saying approximately what the point was, or approximately what the distance was.

Q. Then you can't explain that on the chart?

A. Not very well; not in the manner in which you require it.

Q. Again, Captain, I want to call your attention to the place where you put the Samson when the second signal was given. You say there (indicating)?

A. Yes, sir.

Q. I want also to call your attention to the place where you put the collision at that time. Now, what lights did the Samson show after the second whistle was given, about the time of the collision?

A. What lights would she show?

Q. What lights did she show, after the second whistle and to the time of the collision?

A. Well, she showed a portion of the time her red and green lights, and a portion of the time her green light was shut out just before the collision.

Q. Now, if the Samson went from the point where you say she was at the time of the second signal, to

the point of the collision, what light would she show? Look at the chart and see.

A. Well, if this matter was put down with reference to such a case of this kind; of course, if this was followed exactly, as that chart is, you might say she would only show the port lights; if these marks were faithfully followed out, as laid down here.

Q. Now, Captain, she couldn't show the port light at all; she must show the green light there altogether, if she went from this point here, which is the point you put her down?

A. But here is the point of collision.

Q. But if she went from there, the point where you put her at the time of the second signal, to that point, which is the point of collision, she could only show the green light, couldn't she?

A. Yes, I can be mistaken in that.

Q. You are by the chart?

A. Yes.

Q. You have everything mixed up there?

A. A little bit.

Q. Very much mixed, because, as a matter of fact, the Samson showed both red and green lights all the time.

A. Practically.

Q. Except just as the collision took place?

A. Yes.

Q. Show on the chart right.

A. The Samson would be wrong, so we will move her back a little.

Q. Suppose you move her back a little. How much further are you going to move her back?

A. Well, say, about this point.

Q. Now, mark out there "corrected location of the Samson at the time of the second signal" (Witness does so). Now, you don't change your point of collision.

A. Practically not, no.

Q. And you don't change the point where the oil barge was at that time. Is that right? At the time the second signal was given? I want the Court to understand, Captain, if you can make him understand it,—I can't understand it.—

A. Well, I suppose the Samson is too far out in the stream is the trouble, is all. That would be more like it.

Q. Then put "third corrected location of the Samson"—"second corrected location of the Samson" (Witness does so). And now you don't want to change your point where the oil barge was at the time the second whistle was given?

A. No.

Q. Nor the point where the collision took place?

A. No.

Q. Now, look at the chart will you, and tell me which was further from the point of the collision at the time that the second whistle was given—the Samson or the oil barge.

A. Well, it looks as if the oil barge was.

Q. As if the oil barge was nearer the point of col-

lision?

A. No, the oil barge is farther from the point of collision than the Samson.

Q. According to this chart as now corrected, it shows the Samson was nearer the point of collision than the oil barge?

A. Yes.

Q. And how fast was the Samson traveling?

A. She was traveling perhaps twice the speed of the oil barge.

Q. So you still have the Samson located wrong?

A. Have the oil barge located wrong now.

Q. Take care of the oil barge location.

A. Will move her up, then. Will move her up to about here.

Q. All right, put that "corrected location of the oil barge." (Witness does so.) Now, Captain, if the Samson went from the place where you have now put her to the point of collision, and the oil barge went from the place where you have now put her to the point of collision, what lights could you see on the Samson?

A. Both lights.

Q. What angle are they going to go by?

A. Sufficient angle to show both lights.

Q. What angle, about?

A. I can't figure that out. You will have to judge for yourself.

Q. You mean to say that two ships coming together at that angle, one going that way, and the

other this way, coming together at that angle, that you can see the red light of the Samson?

A. Well, this would be the angle they would come at. If I were on this bow couldn't I see?

Q. You have this boat here. There is where the boat is now, and your boat is here (indicating on Libellant's Exhibit 1).

A. But with no reference to the way that boat is headed. That is simply the point. She might be headed in this direction, or she might be headed this way, or this way, as far as that point of land is concerned.

Q. I understood you to say on your direct examination that she didn't change her direction at all, as far as you could tell from the time you first saw her until the collision.

A. I don't think so, generally.

Q. There is where you put her to start with, didn't you? That is right, isn't it?

A. Approximately.

Q. Now, how could she get to the point of collision if she ran on that same line without changing her direction?

A. Well, I believe that I said that I didn't know exactly the point in the river which she was.

Q. Well, fix her in the river anywhere you choose.

A. Well, I would have no way of doing that.

Q. And say how she got there.

A. This is a dark night. That is a long ways up there.

Q. Put her in the river anywhere you choose.

A. I can't do that. I wouldn't agree to do that. I wouldn't care to put her in any part of the river, because I would have no way of knowing. I only said I thought approximately.

Q. Well, if she were here at the time you saw her when the second whistle was blown, and was going this way, coming towards you, she would never get to the point of collision, would she?

A. Why?

Q. Because she is coming towards you, isn't she, if going that way? You can't see her lights, can you?

A. I don't understand.

Q. If she started from the point where you place her at the time the second signal was given, to the point which you have marked here as the point of collision, if going to that point in a straight line, you could never see her red light from where you were, could you?

A. Why?

Q. Because the angle would shut it off, wouldn't it?

A. I think not.

Q. You mean to say that you can see the red light of a vessel coming in that direction, the direction that is to say, in which the Samson would have been coming, between the point where she was, when you gave the second signal, and the point where the collision took place, from the point where you were at the time you gave the second signal?

Mr. C. E. S. WOOD: Do you understand that, Captain?

A. No, I don't.

Q. Now, listen and see if you understand this.

A. I was listening with all my ears.

Q. If the Samson came from the point where you say she was at the time the second signal was given, to the point of collision without changing her course—I understand you to say you were running apart after that second signal was given—hard apart, is that right?

A. Yes.

Q. Now, will you tell me how you could see the red light of the Samson when she was running on a line between the point where you say she was at the time you gave the second signal and the point where the collision took place?

A. I can't understand you.

Q. You can't tell how it was?

A. No, I don't understand you.

Q. You can't understand that question?

A. I can't understand the way you put it.

(Question read as follows: Now, will you tell me how you could see the red light of the Samson when she was running on a line between the point where you say she was at the time you gave the second signal and the point where the collision took place?)

A. I couldn't see her red light?

Q. I say, will you tell me how you could see her red light when running on that line?

A. I don't believe I could tell you. If she is headed in a direction towards the barge, why, I could see both her lights. If she would change her position any way, so the red light would be shut out, I couldn't see it.

Q. In order to get to the point of collision—

A. (Interrupting) She would have to come towards the barge. She would have to show both lights.

Q. In order to get to the point of collision from the place where she was at the time you gave the second signal, she had to run on a line from that point where you place her at the time of the second signal, to the point where you say the collision took place, didn't she?

A. Yes.

Q. Now, therefore, she wasn't running in the direction in which you were running at the time you gave the second signal, was she? You were running at an angle, weren't you?

A. Yes, but we were running also at a point where she was intercepting our course.

Q. I say, you were running at an angle with her, weren't you?

A. Yes, that is what I claim.

Q. I want to know how you could see her red lights when you were running at an angle with her, and she was running with her starboard side towards you?

A. I claim she was running directly towards me or there couldn't have been a collision.

Q. Could she have run directly towards you if she had run from the point where you placed her when the second signal was given, to the point of collision?

A. I think so.

Q. And you put your helm hard aport too?

A. She was going all the time, and we, of course, didn't get much out of her way. We didn't move out of the track far enough that she didn't hit us, so we couldn't have been running at an angle away from her.

Q. Now, Captain Sullivan, I understand you to say that the Henderson was aground down here on the point of Tenas Illihee Island. Is that right?

A. Yes.

Q. Between, we will say, almost in a line between the point of Tenas Illihee Island and Cathlamet?

A. Probably.

Q. About how far from the island?

A. I think about 800 feet.

Q. About 800 feet?

A. Yes.

Q. And you said in your direct examination that you now locate yourself, at the time when you first gave the Samson the signal, off some slough. What slough was that?

A. I don't believe I said anything about a slough.

Q. I understood you to say off some slough or fish trap.

A. I said fish trap.

Q. Isn't the fish trap at the mouth of the slough?

A. I don't know. I didn't say anything about a slough.

Q. You say you knew where the sloughs are there.

A. No, I didn't.

COURT: He was talking about the sloughs on the island, and the trap is on this side.

A. No, the trap on the island.

Q. He says the trap on the island opposite to where he was at the time when he first saw the Samson.

A. I think there is a slough just immediately above that trap, or very close to it, if I recollect; I think, but I don't pretend to know about those sloughs there.

Q. Where is the Ostervolt house?

A. Where is it?

Q. Yes. Locate that on the map. (Witness does so). And you place yourself now just below, you say, a fish trap?

A. No, I said about opposite a fish trap.

Q. Then make that "fish trap" on the chart will you? (Witness does so.) Now, you put yourself in opposite the fish trap, but you have put yourself further out in the river, haven't you, than the fish trap?

A. No, I haven't intended to. Well, I was then—that is what I intended to, but I will put it opposite that (marking on map).

Q. Then put this "corrected fish trap."

A. No, I won't do that. I was not correcting it, but I merely mistook. I thought this was the mark

which I represented to be the boat.

Q. Well, put it down "second location of fish trap."

A. No, I won't do that. I thought this was the boat.

Q. I would like to have it marked that way by the reporter, if the witness will not do it.

Mr. SNOW: I don't see any occasion for that, if your Honor please.

COURT: You can just mark it "second location" if you misunderstood. (Witness marks.)

Q. Now, how long was it, in your judgment, after the second signal was given, before the collision occurred?

A. Oh, I would think thirty seconds.

Q. Thirty seconds?

A. Yes.

Q. So you didn't give a second signal until you were within thirty seconds of the Samson?

A. No, I said 500 feet. I was just figuring how long it would take to run 500 feet, at the rate we estimated we were going.

Q. Now, on your examination before the inspectors, you placed that distance at 200 feet, didn't you?

A. I think not. I see there is—I see there was two; I think I was misquoted the second time. I think the first time there was 500 feet. It says 500 feet, and the second time I think I was misquoted. I see it there in reading it over, but I didn't intend to

make such a statement, if I did. Somebody has put it down wrong.

Q. Now, Captain, I couldn't find anywhere in this evidence—I have been looking it over at noon—that you made any statement other than 200 feet.

A. I think if you will look in the evidence at the preliminary hearing, you will find 500 feet.

Q. I don't know anything about that, but on this examination?

A. I have been misquoted there.

Q. On this examination, it appears you said it was 200 feet, doesn't it?

A. I see it does, but I don't think I made that statement.

Q. You think that is a mistake?

A. I think a mistake, yes.

Q. All right; we will call the reporter. You are represented here as saying, in answer to this question: "About how far before the accident did you give this order?" That is the question. "A. Well, I would think that we were at that time 200 feet apart, it seemed to me, and I should judge—of course the question of time would be hard to determine, how long that would take. That might have been a minute's time, it might have been a fraction more or less; that I couldn't determine. It is a time a person doesn't think of time. He has so many other things to think of." That is the way the reporter has extended your testimony, isn't it?

A. It is in the main correct, but the 200 feet.

Q. And you think it does appear that way from this evidence?

A. I think the 200 is a mistake.

Q. You think now it was 500 feet?

A. Yes.

Q. And you think you went that 500 feet in how long a time?

A. Thirty seconds.

Q. And how do you figure you went 500 feet in thirty seconds, Captain Sullivan?

A. Well, the testimony, I think, on the part of the *Samson*, is about seven or eight miles an hour, and ours, we estimated at three miles an hour; that would be eleven miles an hour. That would be five minutes to the mile, 500 feet is about one-tenth of a mile, approximately one-tenth of a mile; five minutes a mile. That would be one-half a minute, wouldn't it?

A. Now, Captain Sullivan, if the *Samson* was going seven miles an hour, and you were going three miles an hour, in thirty seconds you would go 440 feet.

A. Well, that would be pretty close to 500 feet.

Q. You think it was thirty seconds?

A. I think so.

Q. At that time you had realized, had you not, that a collision was imminent, if not necessary?

A. No, hardly. I didn't hardly think so.

Q. You did not?

A. No.

Q. Even at that time, you didn't think a collision

was imminent?

A. No, I thought we were in a pretty dangerous position, to be sure, but I didn't hardly expect a collision then.

Q. You saw the lights of the Samson nearly all the time, did you?

A. Yes, sir.

Q. And she was showing both lights nearly all the time?

A. Yes.

Q. She showed both lights all the time until just before the collision?

A. Yes, sir.

Q. And then you saw the red light only?

A. Yes, sir.

Q. Now, Captain Sullivan, what did you make of her course? Did you understand it?

A. What?

Q. Did you understand her course?

A. I don't understand you.

Q. Did you understand her course? Did you understand the course the Samson was taking?

A. I guess I am too dense.

Q. Well, at the time you gave the whistle the first time, you gave that whistle for the purpose of signalling to the Samson that you were going to pass to port, didn't you?

A. Yes.

Q. At the time that you gave the whistle to the Samson the second time, you gave the Samson also a

whistle signifying that you were going to pass to port?

A. Yes, sir.

Q. Now, could you pass to port if the Samson maintained that same course that she had been maintaining all the time that you were watching her?

A. No.

Q. Then, did you understand the Samson intended to pass to port then?

A. Why, I had no reason to think otherwise.

Q. Could the Samson, within that space, going at the speed she was going, with these barges in front of her, have passed to port?

A. If she were swinging, they could.

Q. But if not swinging; you say wasn't swinging at that time.

A. I had no reason to think she wasn't swinging, because I would suppose they would surely take some precaution.

Q. Couldn't you see whether swinging or not?

A. I couldn't tell, no.

Q. She had a bright light on one of her barges, didn't she?

A. That was the unfortunate part of it. If had been a bright light on both barges, I could have told.

Q. But you couldn't tell with a bright light on one of the barges?

A. I couldn't tell, no.

Q. You couldn't tell with the red and green lights?

A. Not very well.

Q. You couldn't tell at all?

A. Oh, could tell to some extent, but not very well, that distance.

Q. Now, as a matter of fact, you didn't understand then, what she meant by keeping on that course, did you?

A. I couldn't imagine, no.

Q. And didn't you say to one of the officers on the barge: "What is the matter with that fellow? He doesn't seem to know what he is doing?"

A. I don't think so.

Q. One of the witnesses, Mr. Martinson, I think it was, testified.

A. I made the remark that I wondered what was the matter with that fellow, that he didn't alter his course.

Q. You couldn't understand what he meant by that, could you?

A. No.

Q. At the time you gave the second whistle, Captain Sullivan, you saw then that the collision was imminent, didn't you?

A. No.

Q. Didn't you say that at or before you gave the second whistle, you told the boatswain to stand by his anchors?

A. In case they were needed.

Q. You did tell him that, didn't you?

A. But standing by, is not letting go.

Q. I know it isn't, but at that time you thought it

possible.

A. I wanted him to be ready in case we needed them.

Q. And you thought there was danger, so he would have to prepare for it in advance?

A. Not from the Samson at no time. I thought if we turned, would be danger of going ashore.

Q. Only danger of going ashore?

A. That was my trouble.

Q. Didn't think any danger of hitting the Samson?

A. Not at that time, no.

Q. Now, Captain, in your examination before the inspectors, I will ask you to state whether or not you didn't testify as follows: "Q. If the Samson was going this way, you certainly would have to be coming that way, wouldn't you, to have got hit? A. Yes, sir. Q. You understand now what I mean? A. If we were continuing the course? Q. Yes. A. You see, for instance, we were steering, as I said in my testimony, about for this point of the bluff when we sighted her. Q. Yes. A. At that time she would be steering at an angle to our course. We were not steering ahead, as it appeared to me; we were showing our port light, and her both lights were showing coming in this direction (indicating). Q. Which indicated to you that she was on an angle. A. She was on an angle coming toward us, while we were heading for the bluff, and I was alarmed that we would not pass one another before we would reach a point where

we would be endangered by striking the shore at this bluff,—very much so. Still I supposed that some effort would be made, that this situation could be seen by the parties on the Samson, and some effort would be made to shear off. I hoped that would occur before we would reach a point where we would be sure of striking this bluff, but when it was apparent that could not be done, then the only hopes for me to save this oil barge was to turn her direct to the shore as fast as she could make the turn, which could only be done by the helm being hard aport as far as could be done. That was the only hopes left. And to further save the Henderson by trying to back, to swing the stern down as I saw that she was going to be struck. I saw at this point as she passed its bow that the oil barge would not be injured, but that the Henderson would surely catch the blow. Of course my first thought was to swing the oil barge clear, and then I saw later on that the Henderson was bound to catch this blow. Then I hoped to save that by backing. Of course, that was all momentary, and was only just a last resort." Did you so testify?

A. Yes, sir.

Q. Now, that was at the time when you ordered the helm hard aport, wasn't it?

A. Yes.

Q. And at that time you thought the only way of escaping the collision with the Samson was to put your helm hard aport?

A. Yes, sir.

Q. And then you saw also that there was imminent danger of a collision, and at that time you gave the Henderson orders, as I understood you to testify, today, to port her helm and back.

A. What time do you refer to, Mr. Minor?

Q. I understood you to say today, Captain, that at the time you gave this order to your helmsman on the barge to put his helm hard aport, at the same time you turned to the Henderson and told them to put the helm hard aport and back?

A. I thought you were talking with reference to a whistle, was the question you asked me. Did you ask me a question, at the time I blew this whistle, did I think there was danger to the oil barge from a collision?

Q. Yes.

A. Is that the question?

Q. Yes.

A. I said no.

Q. Yes.

A. Then what further? What has this question got to do with that?

Q. I read what you testified to before.

A. What has this question to do with that?

Q. I read you what you testified before, and you said you so testified.

A. Before the whistle blew?

Q. No, sir; at the time the whistle blew.

A. This was after the whistle was blown.

Q. I understood you to testify, and your helms-

man testified, that when you blew the second whistle, you put the helm hard aport.

A. After.

Q. You testified today that you did at the time you gave the second whistle. At least, that is my understanding of it.

Mr. C. E. S. WOOD: Mr. Minor, I call your attention that that answer covers a long lapse of time after the collision.

Q. Now, did you testify this morning, as I understood you to, that when you blew the second whistle, you gave the helmsman order to hard aport?

A. I seem to recall that I said after the second whistle was blown.

Q. How long after before you gave the order to hard aport?

A. I don't think I said that.

Q. How long was it then?

A. Oh, I couldn't say. That is a lapse of time which would be so small.

Q. Tell as nearly as you can.

A. Well, I wouldn't undertake to say how long.

Q. Why wouldn't you tell, Captain?

A. I said soon after.

Q. Well, how soon after?

A. Well, I couldn't, I don't think, form any estimate of it.

Q. Was it five seconds after?

A. Possibly; possibly ten.

Q. Maybe ten seconds after?

A. Possibly ten seconds.

Q. Was it as much as 15 seconds after?

A. I don't think so, hardly; probably ten seconds.

Q. I understand you to say now there was a light on one of the rock barges?

A. Yes, sir.

Q. Which one?

A. The starboard barge.

Q. Was there none on the other one?

A. None that I saw.

Q. You won't say there was none, but there was none you saw?

A. I said none that I saw.

Q. Now, I understood you to say this morning that the Samson answered your first whistle?

A. Yes, sir.

Q. Did I understand you to say that she did or did not answer the second whistle?

A. I don't know. I didn't say.

Q. Why is it you can't say whether she answered the second signal or not?

A. Oh, I might not have been—I might have been very much occupied.

Q. Why was your mind so occupied at that time?

A. Oh, for various reasons, perhaps. I can't say. I didn't hear it.

Q. Captain, as a matter of fact, now, wasn't the most important thing for you to know, at the time you gave the second whistle, whether the Samson understood that whistle or not?

A. That would have no bearing on the case at all.

Q. Why not?

A. What could I do? What benefit would the whistle be? What could the whistle do to change her course?

Q. I say, wasn't the thing that you must necessarily have had most in mind been to know whether the Samson understood your second whistle, or not?

A. I don't think it had any bearing on the case at all.

Q. Why did you whistle to pass by?

A. I simply whistled as a warning.

Q. Warning to do what?

A. Expected of course he would answer.

Q. You whistle as a warning to signify what course you are going to take, don't you?

A. Exactly.

Q. You expect an answer, don't you?

A. Exactly.

Q. The rules require an answer?

A. Not necessarily.

Q. Don't the rules require an answer?

A. The rules say—

Q. I say, don't the rules require an answer?

A. Yes, they would.

Q. If the rules require you to blow a signal, and require the other boat to give an answer, isn't it your business to know that the signal is answered, or not?

A. Not necessarily.

Q. Why not?

A. It is not up to me to answer the signal.

Q. It is up to you to know whether your signal is understood or not isn't it?

A. Not necessarily. It is up to him. I simply blow the whistle, and if the other fellow doesn't answer them—

Q. I call your attention to certain rules, and particularly to Rule 3 on Page 22 of these Pilot's Rules, Edition of April 1, 1911, which reads as follows: "If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle." Did you observe that rule?

A. Did I what?

Q. Did you observe this rule?

A. In this case?

Q. Yes.

A. I don't think that rule had anything to do with the case.

Q. Well, did you understand the course of the Samson?

A. Why, I could see by his lights the course he was steering.

Q. Could you see by his lights he intended to pass you to port or to starboard?

A. I couldn't tell by the lights what he intended to do.

Q. You couldn't understand by the lights what

his course meant?

A. I saw by the lights what he was doing, but couldn't understand what he was intending to do—what he could do.

Q. This rule says: "If, when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately signify the same by giving several short and rapid blasts, not less than four, of the steam whistle." Now, you didn't understand the intention of the Samson, did you?

A. Oh, yes, I did.

Q. What was their intention?

A. I suppose he intended to pass to port. He answered the whistle to that effect.

Q. You supposed he intended to pass to port? And yet his course was such to show you he couldn't pass to port?

A. I didn't say he couldn't pass to port. I say he didn't pass to port, but I said that I supposed that he would pass to port.

Q. Well, he didn't show any intention of passing to port, did he?

A. He didn't show any intention he couldn't pass to port. He didn't disregard my signals. He answered regularly and promptly; could pass to port.

Q. You say he didn't answer the second signal?

A. I said I didn't know.

Q. You ought to have known, hadn't you?

A. Not necessarily.

Q. Why not?

A. Why should I?

Q. I am asking you why you shouldn't have known?

A. I say not necessarily. That is my answer.

Q. What was the object of your giving the second signal?

A. To further warn him, asking if he understood the signal to pass to port.

Q. Then you asked if he understood your signal?

A. Yes.

Q. And he didn't answer?

A. He says he did.

Q. But you didn't hear?

A. I didn't hear it.

Q. Therefore, you didn't understand whether he understood was going to pass to port, or not?

A. That wouldn't make any difference.

Q. I say, you didn't understand his course, did you?

A. I did understand his course by the lights.

Q. And his lights showed what?

A. That he was steering in our direction.

Q. He was steering to what?

A. Towards us.

Q. And didn't intend to pass to port?

A. I didn't know whether he intended or not.

Q. The lights didn't show he intended to do it.

A. I supposed he would. I had no right to as-

sume anything else.

Q. The lights didn't say that, did they?

A. I say the lights didn't show what he intended to do. I couldn't tell what he intended to do. That is the question you put.

Q. That is what I want to know. This rule requires if you don't know his intention,—it don't say course only—but if you don't understand his course or intention.

A. But I did understand his intention.

Q. When?

A. He answered my one whistle.

Q. When did you understand it?

A. The first whistle that was blown.

Q. Did you understand it at the time you gave the second whistle?

A. I supposed he would turn to port.

Q. Did you understand it?

A. Understand what?

Q. His intention?

A. I had no reason to suppose he didn't intend passing to port.

Q. Why did you give the second whistle?

A. Simply as a warning he should make some effort to get out of the way, if he wasn't making all the effort he could.

Q. Captain Sullivan, you have run the Samson, haven't you?

A. I have.

Q. You have run on her towing barges?

A. Not that kind of barges.

Q. You pass her frequently towing those barges?

A. Very often, yes.

Q. I would like to have you tell the Court how the Samson was going to steer away from you within thirty seconds after you gave your second whistle, and pass you to port. Was it possible, now, for the Samson to do that?

A. I think so.

Q. You think so?

A. Supposing that she was swinging.

Q. Supposing that she wasn't swinging.

A. I had no reason to suppose she wasn't swinging. How did I know she wasn't swinging?

Q. Didn't you say the lights didn't show a change of course?

A. Suppose just on the point of swinging.

Q. The lights didn't show?

A. I would have no reason to know whether showed plain or just on the point of the green light closing out.

Q. The lights didn't show anything, did they?

A. Not at that time.

Q. So you couldn't tell whether swinging or not?

A. Well, I couldn't tell, but I had no right to assume that he wasn't swinging.

Q. Then you didn't understand his course, did you?

A. I understood his course; that he was showing both his lights.

Q. Well, you didn't understand what course he was running on?

A. Well, I could understand that much of it.

Q. Captain Sullivan, I understand you were going about three miles an hour?

A. That is what we estimate.

Q. What was the current at that time in the river?

A. I don't know—have no way of telling.

Q. Have you no idea what it was?

A. No. Couldn't say.

Q. When you are going three miles an hour, in what space does it take you to make a landing with Oil Barge 93?

A. I never tried it.

Q. You do land her, do you?

A. Yes, but not under those circumstances.

Q. How long a time—how far or how long a distance from the landing is it, before you stop your way? Your towboat.

A. That would depend on the speed she was going.

Q. Suppose she was going three miles an hour?

A. That would depend on the conditions under which she was landed.

Q. Take any conditions you choose.

A. I will say, take tonight. In the first place, I would stop a great deal further off than would be necessary, because I would have to find out what she was going to do; then perhaps I would have to go ahead afterwards, and under any circumstance, I

would probably stop her further off than necessary because I couldn't tell exactly what she would do. Would take plenty of time for it.

Q. How much time do you take, anyway, for stopping?

A. I wouldn't undertake to say how much time. Never timed it—couldn't tell.

Q. How much space do you take in order to stop?

A. If the water was still, probably would take 400 or 500 feet, or twice 500 feet.

Q. What is that?

A. Probably would slow down and stop twice 500 feet away.

Q. If the water was still, stop a thousand feet away?

A. Very likely.

Q. If the water wasn't still, how far would you stop?

A. I don't know; would depend on how swift it was.

Q. You think, after you stop the engines of your towboat in still water, the oil barge 93, if going about three miles an hour, would drift 1,000 feet?

A. I don't think that.

Q. Then why do you stop a thousand feet off?

A. Well, to be sure—that would have nothing to do with what I might think she would do or what she would do.

Q. How far do you think she would drift?

A. I couldn't say; wouldn't undertake to say with-

out experimenting.

Q. How far do you say you were standing from the bow of the oil barge?

A. About 25 feet.

Q. I didn't hear.

A. About 25 feet.

Q. If you were standing 25 feet from the oil barge bow, do you steer by her stern or by the bow?

A. By both; principally by the bow.

Q. Principally by what? I didn't hear?

A. By both stern and bow.

Q. Principally by—you said principally by something.

A. I said both stern and bow. I would use both the bow and the stern.

Q. Now, if you were standing 25 feet from the bow, could you tell whether she was paying off or not?

A. Sufficiently to steer, yes. Sufficiently for all purposes necessary to steer.

Q. You could?

A. Yes, sir.

Q. What do you mean by sufficiently for all purposes?

A. Well, so that I could direct her course, and keep her in the river.

Q. But this night, as I understand, you really were steering by the stern, weren't you?

A. Well, because the range was astern. That was

the principle.

Q. I say you really were steering by the stern, weren't you?

A. Part of the time—not altogether.

Q. Do you know where these rock barges were anchored the next morning?

A. Not exactly.

Q. Do you know approximately where they were anchored?

A. Yes, they seemed to be anchored up on the range, down—oh, in the neighborhood of that fish trap.

Q. On the range?

A. Yes, appeared to be on the range. One of them, I think, was a little below the others.

Q. Don't you know, as a matter of fact, that they were anchored within 200 feet of the Puget Island shore?

A. No, I don't know that. I don't think that is a fact. I don't think it is a fact. I think it was said, but I don't think it is a fact.

Q. You don't think that is a fact?

A. No, I think they were nearer the range. I think they were.

Q. During all the time that you saw the Samson, did you notice any change in her course?

A. Oh, I wouldn't undertake to say. Possibly I did, possibly I didn't. I don't remember that. I didn't pay any particular attention.

Q. When you were examined before—

A. I remember that I saw her lights all the time.

Q. When you were examined before, did you say, in answer to the question: "Was there any change in her course?" "I could not see that there was."

A. I couldn't say I—I don't remember that there was or wasn't.

Q. Did you so testify?

A. I guess I did.

Q. That was true at the time you testified, was it?

A. It must have been, yes.

Q. Now, I will ask you, Captain Sullivan, whether on the examination before the inspectors, you didn't testify "The second whistle wasn't necessary but it was only served as a warning. It was my nervous condition of fear that we were going to get together, and to give him further warning, that I was afraid we were coming together." Didn't you so testify?

A. I guess I did.

Q. Is it true now, then?

A. Very likely.

Q. Now, as a matter of fact, it is true, isn't it?

A. Yes.

Q. Now, I will ask you, Captain Sullivan, whether, on your examination before, you didn't testify as follows: "Q. During all that time you saw that the Samson was continuing on the same course. A. She seemed to be; yet, she could have changed her course and still got away. Q. Could she have changed her course after you gave the second whistle, and have gotten away? A. I don't think so." Didn't you so

testify?

A. I don't remember just what led up to the question, but I think now that I possibly said, in the light of what happened, that I didn't think she could have done so. Isn't that the way?

Q. Further in the same connection, in answer to the question "You don't think so," didn't you say, "I don't believe that she could?" Didn't you so testify?

A. I guess so, if it is there.

Q. Was that true at the time you gave that testimony?

A. Yes.

Q. It is true now, too?

A. Yes.

Mr. ERSKINE WOOD: Mr. Minor, will you read the rest of the page, or shall I?

Mr. MINOR: You can afterwards, I guess. I haven't looked at it to see. I will see. I will read the rest of it. "Q. So, when you gave the second whistle, you then were satisfied she could not get away? A. Well providing she wasn't already under preparation. If she had been making arrangements to change her course, and was swinging, she might have avoided it. If at the time I blew this whistle, the last whistle, if she had been swinging, or making some arrangement, it seemed to me that she could have avoided the collision. I would like to say in regard to that, from the fact there was no light on that barge it left me in a position where I could not accurately tell where that corner of the barge was, or how much she was swing-

ing. That would not make any difference so far as he was concerned, but it left that impression on my mind, that I didn't know where that barge was, and possibly that she was swinging, and possibly the screens of those lights might not exactly indicate but what she was heading a little away, or swinging sufficiently that we could have got clear." You did so testify?

A. Well, I think the rest of that story there would entirely alter the point that you were trying to make.

Q. I say, did you so testify, Captain? Did you so testify?

A. Why, I think so; if it is in that book.

Q. Then you didn't understand what her course was, did you?

A. The point you are trying to make—

Q. Pardon me for interrupting you. I am not trying to make any point, but trying to get the truth.

A. What is the question again?

Q. What I want to know is did you understand her course at that time?

A. I did.

Q. Yes you say here in the answer that you didn't understand what that barge meant, didn't you? What the light on the barge meant?

A. I don't get your meaning?

Q. In this answer you said that would not make any difference as far as he was concerned but "it left that impression on my mind that I didn't know just where that barge was, and possibly that she was

swinging, and possibly the screens of those lights might not exactly indicate but what she was heading a little away, or swinging sufficiently that we could have got clear." Now, you didn't understand where the barge was, did you?

A. The barge had nothing to do with her lights. We were talking about her lights were we not?

Q. I say you didn't understand where the barges were.

A. But I understood where her lights were.

Q. That barge light bothered you, didn't it?

A. I didn't say bothered me. I said I knew where her side lights were which are the things to go by.

Q. As a matter of fact when you testified before, you were under the impression that the rules required her to carry a light on each barge, the starboard and port barge?

A. Yes.

Q. And you found you were wrong?

A. Yes.

Q. And therefore the fact that she only had one light on these barges bothered you, didn't it?

A. Well, if you want to put it that way, yes.

Q. Captain, at the time you were examined before, I will ask you whether or not you didn't testify as follows: "How long after the collision before your barge came to anchor so that it was safe, and you could look around? A. Oh, I think it was perhaps in the neighborhood of five minutes. I should deem it was." Did you so testify?

A. I guess so.

Q. Well, was that correct at that time?

A. Possibly.

Q. It is correct now, then, is it?

A. Yes.

Q. Now, I understand you to say that when you did look around, the Henderson had sunk or had not sunk?

A. No, I saw her before she sunk. I saw her while her lights were still burning.

Q. But you didn't look around until you got your barge safe?

A. Oh, I suppose I did. There would be nothing to prevent my looking in her direction.

Q. Then your testimony that you gave before, you say, "I should think it was perhaps in the neighborhood of five minutes. I should deem it was." Before the barge came to an anchor so that it was safe, and you could look around. So it must have been five minutes before you looked around, wasn't it?

A. I don't quite understand why I should want to look in any particular direction. That is, I don't understand the question or don't understand the answer—why I gave such an answer.

Q. It is there, Captain. That is where I read.

A. I don't see—I don't understand just exactly.

Q. I now understand you to say that some fishermen took the men off the Henderson?

A. I don't know that.

Q. Didn't you so testify this morning?

A. I heard that.

Q. Then you don't know that?

A. No, I think I said that the crew of the small boat sent away reported that the fishermen took the men off.

Q. Now, Captain, on your examination before the inspectors, did you not testify as follows: "Had the Henderson sunk at the time you had time to look around? A. No; no. When I saw her, when I first noticed her, her electric lights were burning. So of course the electric light plant is located on the deck in the engine room, and that could not have been under water. Q. How long after you looked around before she sank? A. Oh, I should judge it was two or three minutes—five minutes?" Did you so testify?

A. I guess so.

Q. Now, Captain, I will ask you whether or not you didn't testify also in that examination as follows: "Q. I also understood you to say at that time when you were 200 feet from this accident, you saw a collision was imminent, indeed, in your judgment, inevitable. A. No, I didn't say that; I said I thought. Q. Well, you thought it was inevitable. A. That there was danger of a collision at that point yet when I blew that whistle, I still was not positive. There was more apprehension on my part that I was getting too near to this shore, with this barge inshore, an unwieldy barge like that, than there was of a collision, because I thought that this man had the proper re-

gard for the conditions, and would use sufficient intelligence, that he was swinging his barge and still that we would not strike, but if I went much further in that direction to avoid a collision, I was in danger of getting the barge on the beach, consequently it was apprehension on my part and a warning to him to make greater effort to keep off with a port helm to prevent the possibility of my getting ashore, than it was that we were going to collide. That is the idea. Q. At that time, then, when you gave the second whistle, you were more afraid of being driven on the Oregon shore than you were of a collision with the Samson or her tow? A. That is the exact situation. Q. Yet, at that time, I understand you ordered the helm hard aport? A. Yes. It would have been a greater—it would have been a less damage to have driven that barge ashore than it would to be struck by that tremendous mass of rock, which of course would sink. If she had run on the shore, of course, at some point there—it turned out my judgment was right—which was on this sandy beach, and if she struck that, it would have been no damage beyond grounding and she might have been pulled off." Now, you so testified on your examination before, did you?

A. Yes, sir.

Q. Now, as a matter of fact, then, at that time you did fear a collision with the Samson, did you?

A. I wouldn't think that would indicate that—that testimony.

Q. Then, Captain, why did you put your helm

hard aport?

A. To avoid any possibility of a collision.

Q. Well, if you didn't fear a collision with the Samson, you wouldn't have put your helm hard aport, and driven yourself on the beach, would you?

A. It would indicate I had some apprehension of a collision.

Q. It would indicate you had such apprehension of a collision with the Samson that you took a chance of running your barge ashore rather than take a chance of having a collision with the Samson, doesn't it?

A. Yes.

Q. And, so that, at that time, when you put your helm hard aport, and gave that second whistle, you thought a collision so imminent that you thought it safer to run your barge ashore or take the risk of running your barge ashore than to take the risk of a collision with the Samson, didn't you?

A. I thought so.

Q. Then, Captain Sullivan, that being the case, why didn't you observe the rule which I read you and sound the four whistles?

A. What benefit would that have been?

Q. The rules require it, don't they?

A. No.

Q. Don't the rules say that? "If when steam vessels are approaching each other, either vessel fails to understand the course or intention of the other, from any cause, the vessel so in doubt shall immediately

signify the same by giving several short and rapid blasts, not less than four of the steam whistle." Now, you were so much afraid of a collision with the Samson at that time that you were willing to take a chance of running ashore, were you not?

A. Well, I don't know why there is any use in answering your question to explain my position—

Q. Well, explain it.

A. (Continuing) But the situation is, that thirty seconds, as the time we agreed on from the time this whistle was blown until this thing was over, and then during that period of time this blowing, and this blowing of the danger signal and answering, and seeing if he really did intend to change his course would seem to me to be a foolish waste of time, if I thought there was danger of a collision. The most reasonable thing would be to put in that time trying to avoid a collision instead of fooling away time to blow danger whistles because the point was too close. The danger signal might have been reasonable when the first whistle was blown if he had shown some peculiarity in his movements, but not at that time. May it please the Court, I would like to make a further explanation on that point. I think that, in the Rules and Regulations, there is a little quotation in italics, that in all cases—

Q. A little louder, so we can all hear.

A. In all cases where danger is imminent, all rules should be disregarded, or practically to that effect where the safety of the vessel is concerned; that we

shall disregard all rules to do anything necessary to preserve the vessel, or to avoid a collision. I think the rules show that, something to that effect.

Q. How fast were you going when you passed the Kern, Mr. Sullivan?

A. Why, I would think about the speed we had been traveling.

Q. About three miles an hour?

A. That is the speed estimate.

Q. Now, how far did you say you thought you had passed the Kern before you sighted the Samson?

A. I think a quarter of a mile.

Q. A quarter of a mile. How far would you run in a quarter of a mile?

A. How far would we run?

Q. Yes.

A. A quarter of a mile.

Q. What?

A. In a quarter of a mile, how far would we run?

Q. How long would it take you to run a quarter of a mile? I thought you said a quarter of a minute.

A. Three miles an hour, is twenty minutes to the mile. A quarter of a mile would be five minutes.

Q. Five minutes. Captain, do you know anything about Prairie Channel?

A. No, sir.

Q. Never been down Prairie Channel?

A. Yes.

Q. Don't know anything about it?

A. No; since I have been down there it has

changed so.

Q. Is there any current setting down Prairie Channel?

A. Some.

Q. Wouldn't it—if the collision took place at the point you say it did, which was right at the head of Prairie Channel, wasn't it?

A. Not exactly, no.

Q. Below the point, wasn't it?

A. A little bit.

Q. That point is the dividing line between the head of Prairie Channel—or is where Prairie Channel puts off from the main channel?

A. No, not necessarily. The Prairie Channel would be further down the current going into Prairie Channel would be further down.

Q. That point is where the south shore of Prairie Channel puts off?

A. No, that is as far as that channel—that channel is really nearer the center of the Columbia River at that point; you remember the range hits over close to there.

Q. If this collision had taken place at the point where you said it took place, and you had ported your helm hard aport, wouldn't your boat have run down Prairie Channel—your barge?

A. No.

Q. Why not?

A. How could it?

Q. Well, I didn't ask you how could it. I asked

you why not.

A. Your question is—I don't see why it could.

Q. There is a channel there, isn't there?

A. We wasn't in that channel. We was in the channel of the Columbia River.

Q. If you put your helm hard aport, wouldn't that tend to drive your barge in the direction of Prairie Channel?

A. No.

Q. It would not?

A. No.

Q. Why?

A. I don't see how it could.

Q. Now, Captain, if the Henderson had been struck, as you said she was struck by the Samson, the barge of the Samson, the blow would tend to drive the Henderson to the left, wouldn't it?

A. No, not necessarily.

Q. That seems to be a stereotyped answer, "not necessarily," but I would like to know how it would tend to drive the Henderson.

A. To drive her against the oil barge, and the oil barge would stop the motion in that direction; 100 feet of her length was alongside the oil barge, and if she struck it, she would be driven against her barge; that wouldn't drive very far to the left.

Mr. C. E. S. WOOD: I think he should say to whose left.

Mr. MINOR: All right; thanks for the suggestion.

Q. Now, if the oil barge struck the Henderson,

as I understand you, the stone barge struck the Henderson, as I understand you, about the forward part of the house—that is right, isn't it?

A. Yes.

Q. How far was that from the stem of the Henderson?

A. Well, I haven't accurate measurements. I believe that the house is 30 feet from the stem, and I would think perhaps this is 15 feet or 20 feet, or some such a matter. I haven't measured it.

Q. You mean that the—

A. (Interrupting) That is the break. That shows one break beyond the house. The hull of the boat shows that it must have been about 15 or 20 feet from the stem of the Henderson.

Q. To where the break commences?

A. To the break, yes.

Q. Now, I understand the force of this blow, as you claim, broke the Henderson entirely loose from the oil barge?

A. Yes, sir.

Q. And I understand that you claim that the rock barges and the Henderson went on down beyond the oil barge down the river, didn't they?

A. Yes, sir.

Q. Now, they went down there with the force of the current and of the rock barges, and the Samson pushing the Henderson toward the Prairie Channel, didn't they?

A. No, she wasn't pointed towards Prairie Chan-

nel at all.

Q. Wasn't pointed towards prairie Channel at all? Look at the chart, please. I don't want to deceive you. Now, note first the point where you say the Samson was at the time the second whistle was blown, and the point where you say the collision took place.

A. Yes.

Q. Now, wasn't the Samson at that time headed in the direction of Prairie Channel—at the time the collision took place?

A. No, she was headed down more towards this island.

Q. Here. This is Prairie Channel (indicating on Exhibit 1). Here there are seven feet of water. The deepest water across here, which indicates not a great amount of that flow goes down there; that is the actual depth of water at the present time in this water across here?

Mr. C. E. S. WOOD: This line across here "XY."

A. But if this vessel would go in a straight line from here, she would have went up that way, but I don't see anything that would indicate that she would be pushed down Prairie Channel.

Q. How was the Samson pointing at the time the collision took place?

A. Something that way (indicating).

Q. Isn't that pointing towards Prairie Channel?

A. Somewhat.

Q. That is now pointing very decidedly towards Prairie Channel?

A. Possibly.

Q. Wouldn't the blow which the Samson struck the Henderson tend to drive her to Prairie Channel?

A. Not much.

Q. I didn't say much. It would?

A. A little, very little.

Q. Now, if the Henderson got loose, wouldn't she tend to drift that way?

A. No, sir.

Q. Why not?

A. Because the current doesn't run that way.

Q. You say it did not?

A. I say it does not.

Q. And where did you get the idea there was seven feet of water in Prairie Channel?

A. By sounding.

Q. When did you sound?

A. About three days ago.

Q. This chart indicates there is over ten feet, doesn't it?

A. Yes.

Q. So you think the chart is wrong?

A. They filled since that.

Q. Then how much water was in it in July, 1911?

A. Oh, it would depend on the stage of the tide.

Q. The tide was high then, wasn't it?

A. A little, half tide.

Q. One half tide, and the tide that night was nine feet, I understand.

A. Yes, a little rise in the river.

Q. So, that was $4\frac{1}{2}$ feet of tide, wasn't it?

A. Yes.

Q. So there must have been on this bar at that time not less than 14 feet of water, wasn't there?

A. Possibly.

Q. Don't you think that would have a tendency to force the Henderson and the rock barges drifting in that direction—drift her down Prairie Channel?

A. No.

Q. You do not?

A. No.

Q. Captain Sullivan, did you state what time you passed the Kern?

A. No, sir, I did not.

Q. Can you tell me how long you passed the Kern before the collision occurred.

A. I didn't estimate the time.

Q. How far was it from where you passed the Kern to the point of the collision?

A. Well, I would have to measure that on the chart. I don't know.

Q. Measure it and see.

A. According to the way I get it here, 3800 feet, according to these measurements, according to the mark of the Kern on the chart to the point of collision shown on the chart and that scale, it would be 3800 feet.

Q. How long would it take you to go that distance.

A. Oh, in the neighborhood of 12 minutes, using

that three miles an hour.

Q. Now, I understood you to say the lights were burning on the oil barge and the Henderson?

A. Yes, sir.

Q. What lights did you have?

A. I had a red light on the steamer Henderson, a green light on the barge, two lights, vertical lights, over the pilot house of the Henderson.

Q. But no other lights?

A. There might have been a light on the stem of the Henderson; we are required to carry a light when running, a running light, but whether they had one at that time or not, I wouldn't be positive. I don't think they did.

Q. How were those lights fixed on these steamers?

A. How do you mean?

Q. The rules require these lights to be put in a certain position?

A. Yes, the rules require that.

Q. And in what way must they be put?

A. Well, usually put on the outside of some structure. On the Henderson an ordinary stern wheel boat, on the outside of the hurricane deck.

Q. How much screen?

A. They are three feet. The screen is three feet long, and a sufficient height.

Q. That means the screen must be three feet?

A. I believe that is the distance.

Q. In front of the light, isn't it?

A. Yes.

Q. And how near is the light set to the upright part which constitutes the screen?

A. Usually a little hook there, a little flat piece of iron, and a little slot in the side of the lamp, so they can't be more than half an inch away.

Q. How were they on the Henderson?

A. I don't know.

Q. How were they on the oil barge?

A. I don't know that.

Q. How were they on the Samson?

A. I have no idea.

Q. You have run on the Samson?

A. Yes, but they may have been changed since I was there. There was a bridge put on since I was there. I think at the time I was there—I don't remember just how they were. I know—

COURT (Interrupting): You refer to the glove that covers the light, and not the light itself?

A. The cover to the light itself, the lamp in which it is contained.

Mr. MINOR: That is all.

Redirect Examination.

Questions by Mr. C. E. S. WOOD:

Captain Sullivan, there were two examinations before this, into these matters, by the inspectors, were there not?

A. Yes, sir.

Q. And the first one was an ex parte examination in which they just investigated the case for their own

determination?

A. Yes, sir.

Q. And in that you testified, did you not?

A. Yes, sir.

Q. Well, now, in reference to the question asked you by Mr. Minor, as to whether or not you had not said different from 200 feet apart, you said that you thought—200 feet apart when the second whistle was blown. You said you thought you had said 500 feet?

A. Yes, sir.

Q. And that this 200 was a mistake? Now, in that connection I call your attention to your testimony in the original investigation before the inspectors, and will ask you if you did not testify substantially as follows: "As we got nearer, perhaps 400 or 500 feet away, I blew another blast of the whistle to warn him to keep off, or make some other arrangements about getting out of the way; and still there was no change, and I ordered the helm hard aport and headed the barge for the shore." Is that what you had in mind in reference to your having said they were 500 feet apart when you blew the second whistle?

A. I think so.

Q. Then there was some testimony; Mr. Minor asked you whether or not you had given an order to the man to let go the anchor, or to get ready to let go the anchor, and on the same page of the examination by the inspectors for their own benefit, there is this record: "Hit the Henderson on the port side about the corner of the house, as near as I could tell,

which of course broke the lines of the Henderson, broke her loose from the barge. I immediately ordered the anchors let go, but prior to this time I had notified the man on watch to stand by the anchors, as we would probably have to anchor, and he let go instantly." Is that the testimony you referred to there?

A. Yes, sir.

Q. Then there was a second examination of which a record was made, at the time of the trial of Captain Jordan before the inspectors, was there not?

A. Yes, sir.

Q. And that is the testimony which Mr. Minor has been examining you on. Captain, you were cross examined as to the relation of the tug Samson with her barges, and the oil barge 93 and the Henderson as outlined and placed by you on the chart. I will ask you whether or not you intended and so testified here, that your locations on the chart were exact?

A. No, sir, they are only approximate and roughly given, merely to illustrate the possible positions.

Q. What is the scale of that chart?

A. I think it is about a thousand feet to the inch. I believe that is what it is. I think it states there.

Q. Then when you drew the course of the Henderson and the oil barge, covering a couple of inches of this chart, did you intend that course to accurately represent all the maneuvers of the barge and the Henderson?

A. No.

Q. Now, I will ask you in comparison, relatively, as to accuracy, how do you yourself intend this chart to be taken, relative to your testimony of the events as they happened? For example, when you locate the barge Samson,—the towboats Samson with her barges on the chart, and you testify that that night you saw the red and green light and they didn't subsequently alter as far as you could see, which do you yourself intend to be taken as the more accurate? Your location on the chart, or your memory of the events that night?

A. Well, I don't quite catch your meaning.

Q. I mean, as I understand it, Mr. Minor examined you as to the location of the Samson on that chart and you said you had made a mistake, and altered the position. Now, then, you also testified, of your own independent memory, that the Samson's red and green lights appeared in view and she didn't subsequently alter, as far as you could see. Now, which of these two statements is the more accurate, the fact that the lights appeared in view and didn't alter, or the location that you put on the chart?

A. Well, my memory of how the lights appeared would be the natural one to take. Of course, the location on the chart, unless it was taken accurately with instruments or something to give those things—in an off-hand way, a man not accustomed to making charts, making drawings, usually makes rather a foolish looking thing of it.

Q. In other words, then, the chart is merely illus-

trative of your testimony?

A. That is the idea I hope I convey, I intended to convey. Mr. Minor used it otherwise.

Q. Well, we are all trying to aid the Court here in this matter. I want you to come down here, and with the aid of the Court and ourselves, take this tracing paper. (Mr. Wood draws outline of river on blank tracing paper). Now, supposing the point A to be the lower point of Puget Island, and the point B the upper point of Tenas Illihee Island, and the point C the Hunting Island Range Lights, and the line CD the range and the point E the high bluff or point just below Bugby's Hole; using that merely as a rough diagram, I wish you would take a pencil, and illustrate as nearly as you can, the actual maneuverings of the Henderson and the oil barge. Of course, you can't do it to scale. It would be too small. You can exaggerate the maneuvers, but try to give the actual maneuvers made, starting from the time you sighted the Samson until the collision took place, in reference to the range and in reference to these points.

A. I believe that would be a difficult matter to do.

Q. Well, see if you can't make some kind of a stagger at it, to show just what swings she made, etc. Let me ask you a question. I don't know that you know anything about this.

A. I am a poor hand at drawing.

Q. Do you remember trying to avoid some fishermen that night just before?

A. I remember that we passed some fishermen.

Q. Do you remember making a swing for them?

A. Well, I can't say that I do. It is said I did, but I don't remember whether I did or not. I remember the passing some fishermen. I remember there was a fish boat between the Kern and the oil barge.

Q. Now, I was going to say—what I am more particularly after is the latter part of your course where you were making an effort to go into shore, and avoid the Samson? I would like to have a line drawn illustrating that. You can exaggerate that. You needn't pay any attention to that scale. Just draw that course roughly.

A. The line showing turns?

Q. I would draw the course from the time you saw her; take from the time you saw her, and take where you ended up with the collision, and just draw in a rough general way the line you make. Mr. Snow calls my attention to the fact that if you can, in that distance—and that is what I am after—show your turn from the course, then your straightening up and getting on the course again, or your course, whatever it is, then your turns to avoid the collision, etc. Show as nearly as you can just the movements of the oil barge that night, and with reference to the range, particularly. Now, mind you, because I have put this over the old chart, I don't want any reference to the points on the old chart at all. I don't care anything about the old chart. I am using this just as a diagram to illustrate your maneuvers. As I say, this being chart size, your line will be exaggerated, of

course. A. (Witness drawing.) Approximately.

Q. Now, then, from F to G, would represent what—that line out there?

A. Swinging to starboard under port helm.

Q. And at what time?

A. After seeing—making out it was the Samson that was coming with her barges.

Q. And what time in relation to the first blast of the whistle blown by you?

A. Well, prior to the blast. The blast was blown after the turn was made, straightening up. That is about half the distance there, somewhere like that.

Q. So you mean here you commenced to go over?

A. Before whistling.

Q. And then the line GH represents what?

A. Well, the possible turning point, or near the point of collision. That of course, wouldn't be quite—

Mr. SNOW (Interrupting): This line GH, what does that represent?

A. That means the general course before the turn.

Q. That is the one you kept?

A. Yes.

Q. And then from H to E, that curve, what does that represent?

A. That means the barge swinging towards the shore.

Q. Trying to get out of the way of the Samson?

A. Yes.

Q. Now, on that line—I don't want you to get frightened now about accuracy; I don't mean, I don't

expect you to be accurate—indicate about when the first whistle was blown and the second whistle.

A. (Drawing) Perhaps this might be a little nearer.

Mr. SNOW: Mark that G-1.

Q. The first whistle at 1 and the second whistle at 2. Is that right?

A. Approximately.

Q. What is the width of the channel? What width of channel do you think you left to the Samson on your port when you were on this course, which we will call GH, going up the river, available to him between your course and Puget Island?

A. Why, I think about 1400 feet.

Q. Have you stated what the weather was, whether there was any fog or rain?

A. I think I did, but the weather was—the night was dark and the sky was overcast, but the air was clear. The lights showed.

Q. The night was dark. He says, the night was dark, the air was clear, no rain or fog.

Mr. SNOW: And the sky was overcast.

Q. Now, in dividing the river between you two, you going up and the Samson going down, what proportion of the channel do you think you left to the Samson?

A. Why, I think about—let's see. I think that was about 2500 feet right at that point. I am calculating—why, I think it is safe to say we left two-thirds of the river, two-thirds of the distance.

Q. Now, on this same chart and in the same way, without reference to particular point, but the way you would estimate it in the water as you saw it that night, try and outline the course of the Samson as you made it out and observed it by her lights that night. (Witness draws on chart). We will call that line then IJ, shall we? Is that right, Captain?

A. Yes.

Q. Now, locate on that in the same approximate way where you would judge, across the water in the darkness of the night, the Samson was when you blew the first whistle? You might locate it first where she was when you sighted her.

A. Well, she was clear of this point, I think about there.

Q. K—at the point K?

A. Yes.

Q. And then where was she when you blew the first whistle?

A. (Indicating) Possibly there.

Q. At the cross L?

A. Yes.

Q. And where when you blew the second whistle?

A. (Indicating) there.

Q. Right in the letter I. You said, in answer to one of Mr. Minor's interrogatories, that it was about five minutes, as I understood, before your barge—after the collision before your barge was anchored, and you got a chance to look around. In the first place, I want to ask you about these measurements

of minutes or time. What do you base your estimate on? What is your standard? How can you tell whether one minute or not?

A. Absolutely no basis at all for such matters. Absolutely none.

Q. It is a guess, is it?

A. But Mr. Minor seems so persistent in having me name some sort of time that some time has to be named, or nothing will satisfy him, but as I say—

Q. (Interrupting) When you say four or five minutes until you got a chance to look around, does that mean to apply to the first part of the question to when your barge came to anchor, or when you got time to look about you?

A. I can't recall why I gave such an answer, or why such a question was asked.

Q. Then let me ask you directly now. What time would you say, not in minutes or seconds, but a long or short time, quickly or a little time, say from the time of the crash until the time the anchors were let go?

A. Why, a very short time, a remarkably short time. To me who was accustomed to having anchors let go, I was surprised at the shortness of the time.

Q. Then did you intend your answer of four or five minutes to apply to letting go the anchors?

A. No.

Q. Or to the time when you were at ease looking about you?

A. I presume—I don't—I can't recall having an-

swered that question ; that is the first that I remember of it. I probably had reference to the time in which the barge would swing—run out and swing to her anchors and straighten up and show she was afloat.

Q. Perhaps the best way would be to read the testimony, because the construction, I think, is obvious. “How long after the collision before your barge came to anchor so it was safe and you could look around? A. Oh, I should think it was perhaps in the neighborhood of five minutes.” What I am anxious to know, is it to be construed as meaning it was five minutes until you let go the anchor?

A. No, that isn't the idea. I don't see any other construction to make of it but that the barge had swung to her anchor, and it had been ascertained that she was afloat, hadn't struck the bank, and was afloat, and the anchors were holding, and everything was all safe ; that the barge was safe. Then there was no reason to be any further concerned about her. The next question—the next thing would be anything else that might need to be done, such as saving the crew, or anything that might be done. I don't see any other reason for it.

COURT: How many witnesses are there going to be in this case? I am anxious to get through this week.

Mr. C. E. S. WOOD: We will finish this week, undoubtedly, your Honor. It is always difficult to estimate, you know, the length of time the witnesses will take, but I think we have about five more on the col-

lision.

COURT: The arrangements when I came here were that the case would take three or four days. I have set cases and have a number of witnesses subpoenaed to attend for next week.

Mr. C. E. S. WOOD: I think we can safely say it will be submitted this week.

COURT: If it isn't submitted this week, it will have to be deferred, or complete the taking of the testimony before a master.

Mr. C. E. S. WOOD: I think there is no doubt it will be submitted this week. But before I get into another branch of redirect, I would like to have him just mark what has been called Prairie Channel.

Q. Will you please mark on this map Prairie Channel, that Mr. Minor examined you about. (Witness marks on Libellant's Exhibit 1).

Q. And about what is the usual depth of that for the past two or three years?

A. I haven't had any opportunity to observe for the last seven years.

Q. Not used by deep vessels?

A. Not at all. Absolutely not at all.

Mr. C. E. S. WOOD: I offer this drawing in evidence.

Drawing used by witness marked "Libellant's Exhibit 2."

COURT: Captain, is there any difference in the current between the point where you sighted the Samson and the point of the collision, on the different

sides of this range? Is it swifter water on one side?

A. No, the general trend of the current is down.

COURT: No better water going up on one side of the range than the other?

A. No, it is not until they get over towards the shoal, the head of this slough, what they call Prairie Channel is shallow water. This turning of the bluff causes this current to go straight down, and a portion spills down this way. This range is only an imaginary line drawn there, but used for entirely different purposes than what we have been using it, although marked off for navigation in these waters, because it is a dark place in there, and the shadow from that hill covers the water and this range is always observed by everybody, no matter how big or how small the vessel.

COURT: Flood tide, is it strong enough to set the current up?

A. Yes, at low water, very perceptible. 'Quite a little flow up there. In fact, flows as far as Portland.

COURT: After the collision, what time did the tide change, and begin—

A. At that stage of the river, during the freshet season would be no flood, only low water; at this time of the year there would be no flood tide. It never would flood. It would only—flood tide would merely slack it some.

COURT: After the collision, what time did the tide change and begin to flood?

A. In Astoria it would change about six hours

later than 9:40, which was approximately 3:40, would be low water in Astoria: probably six hours difference; and there would be about one hour and forty five minutes, or two hours' difference there at that point.

Whereupon proceedings herein were adjourned until Wednesday, January 13, 1913, at 10 A. M.

Portland, Ore., January 13, 1913, 10 A. M. Wednesday.

CAPTAIN EDWARD SULLIVAN resumes the stand.

Redirect Examination continued.

Questions by Mr. C. E. S. WOOD:

How much water was the oil barge drawing that night?

A. 20½ feet.

Q. Do you know what the draft of the Henderson is?

A. The Henderson? About four feet, I think.

Q. Do you know what the draft of the Samson is?

A. I think about 15 feet.

Q. And how would that draft compare with her loaded barges?

A. Her barges, I understand drew ten feet loaded.

Q. The draft of the Samson would be greater than of the barges, anyway?

A. Yes, sir.

Q. Now, I think it was conceded without regard to the method of employment, that the Henderson

was under the direction of Captain Sullivan.

Mr. SNOW: I think you better ask that question.

Q. Who had charge of the navigation of the combined vessels, the Henderson and the oil barge, coming up the river that night?

A. I did.

Q. The Henderson was only furnishing the motive power?

A. Yes, sir.

Q. And you were employed by whom?

A. Well, I was supposed to be the Standard Oil Company. They were the one that we got our orders from.

Mr. SNOW: Whom do you mean by "we?"

A. I mean as pilots—the association of pilots.

Mr. SNOW: The Pilots' Association?

A. Yes, sir.

Q. You were in the employ of the Standard Oil Company for that night, in charge of their oil barge, weren't you?

A. Yes, sir.

Q. I understood you to say that the Kern was, in your opinion, two miles ahead of the Samson that night?

A. Yes, sir.

Q. And there is some conflict in the testimony on that. I will ask you to give your reasons for that belief. The two miles is, of course, only an estimate, is it?

A. Yes, sir.

Q. Give your reasons for thinking that?

A. Well, I only judge from the time that I pass her until the time that I saw the Samson's lights, and judge largely as to distance from measurements on this chart, which are supposed to be accurate; from the time that I saw her, or the point in which I pass her, until I saw this other one and judge from the length of time, it would be about two miles.

Q. Can you give me an idea, without reference to the chart but with reference to the topography of the river, at about what point in the river you passed the Kern?

A. I think it was abreast of this little bar that shows; has some willows on it now, just below Puget Island.

Q. The bar is a new one?

A. New, formed there recent years.

Q. And you passed her to starboard?

A. Yes.

Q. Then what did you do after passing her in regard to resuming your course?

A. Well, I would like to state a little on that point. It is recognized by all vessels of lighter draft that any vessel crossing the range on a shoal that is dredged, by a range, should have the right of way. No rule, but a generally recognized custom among men acquainted with that business. So at the time we passed them we were right on this shoal where dredged, and running on this range, and had got on this range

shallow water, so the Kern could--so that was the condition, and he could also see this was a ship of some sort, perhaps recognized what ship it was; knew it was deep draft, and of his own—he did himself, I should say, turn off to this side, and showed me that he was going to pass on that side; there was no question about it on either side, as to where we should pass, which side. It was entirely a matter of his own choosing, because his boat would be the greater draft. I suppose 13 or 14 feet; she draws 13 or 14 feet.

Q. She wouldn't be greater than the oil barge?

A. No, he knows that. I think the Kern herself was deeper than the barge; draws perhaps 13 or 14 feet, and had a uniform depth all the time. And he knew this was a vessel of deep draft, recognized that at once, and took this side of his own choosing; and pulled off before we came near one another some distance, and took that side, so when we got together, there was no conflict at all between us; we passed with plenty of room.

Q. That wasn't exactly the point I was after. What I want to get at is about where in the river you passed her, and then what maneuver you executed to pass her, and whether you had to go out of your range course, and if you did what you did to resume your course?

A. No, we were running on the range when we passed her, and before we passed her, continued on this range after we passed her.

Q. And again making a rough estimate, how long

would you think it was after you passed her, before you sighted the lights of the Samson?

A. Well, I think I have testified about five minutes.

Q. So that you had passed the Kern some considerable time before you made that maneuver you have described on sighting the lights of the Sampson in hauling well down on the Oregon side of the range?

A. Yes, sir.

Q. Did I understand you to say everybody uses that range as a guide in coming up there?

A. Everybody, I think that navigates these waters uses that range in some way or another.

Q. Were you watching it that night?

A. Yes, sir.

Q. You are positive, are you then, that you hauled well over toward the Oregon side of it?

A. Yes, very positive.

Q. Now, you also said, if I remember correctly, that there is a very high bluff or mountain there, which casts a shadow on the river just below Bugby Hole. You have also testified that you were afraid of getting ashore. I want to ask you if you have any other way than the anchorage of the oil barge and her relation to the shore the next morning, to determine in your own mind where the collision took place, in reference to the Oregon shore. That is to say, supposing the oil barge hadn't been in existence the next morning, have you any other means by which you determine in your own mind where the collision

took place with reference to the Oregon shore?

A. Well, of course I know—I have observed how this range runs ashore, and what point of land, if it ran on a direct line on the range, where it would reach the shore, and I know that I was below this range. I observed that just shortly before this collision occurred. And then the appearance of that bluff—how it appeared. That would be about as near as I could tell.

Q. What led you to fear that you would be on the shore in a moment if you were crowded any further?

A. Just from what appeared—the way it appeared.

Q. You did have that decided fear?

A. Yes, sir, it appeared to be very near by.

Q. Did you observe at this time, or just before it, your relation to the other shore of the river?

A. No, I don't think I did.

Q. Was it, or was it not visible?

A. Not particularly so; not very easy to see that shore unless you are near it.

Q. Would you say, from your relation to the Puget Island shore, and its invisibility, that you were close on it, or far away from it?

A. Well, I wouldn't notice that in particular; wouldn't be looking in that direction.

Q. Didn't notice that at that time?

A. No.

Q. Explain your reason when you gave the passing signal to the *Samson* of one blast for select-

ing the Oregon side of the channel to pass on?

A. Well, that is the most reasonable way to pass, and the usual custom that I observe, and I notice that other pilots observe the same custom, that the ascending boat takes the right hand of that shore.

Q. That is indicated by one of the rules, isn't it?

A. Well, it is a rule at sea. These rules are not strictly followed in the river. They are where it can be done conveniently.

Q. I know it is not a hard and fast rule?

A. No.

Q. Did your draft and the depth of the channel water have anything to do with it?

A. No, sir.

Q. I suppose it is agreed that the Captain is right; that there is a rule here saying all rules shall be disregarded to prevent accidents.

Mr. Minor: We can find the rule you refer to?

A. I don't think those words are used, but to the same effect.

Q. No. Not the wording. That is the substance of it. I just want to call attention to the rule to show you were right about it.

Mr. MINOR: That is the rule, Rule 11.

Mr. C. E. S. WOOD: Rule 11 is this: "In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

A. Yes, that is what I have reference to.

Q. And this other rule, which I say is not a hard and fast rule, but a mere indication—well, I will ask you in general substance if the rule that you refer to isn't to this effect; that in narrow channels, rivers and fore bays, each vessel shall ordinarily keep to its own starboard side of the channel?

A. That is the rule, I think, that is usually applied; should be, at any rate.

Q. We can refer to the rules later. I only want to get your idea.

Mr. C. E. S. WOOD: Mr. Snow, on his part wants to ask some questions.

Mr. SNOW: Go ahead, Mr. Minor. I will cross examine after you get through.

Mr. ERSKINE WOOD: I would like to ask one or two questions.

Questions by Mr. ERSKINE WOOD:

Captain Sullivan, you said in response to some questions by Mr. Minor that your estimate of the speed was about three miles an hour?

A. Yes, sir.

Q. And I am not sure that I showed on your direct examination how you arrived at that. I would like you to explain that.

A. I notice that in passing Skamokawa light, lower Skamokawa light, it was 12 o'clock, and in the testimony given before the United States Inspectors, the engineers of both the Henderson and the Samson stated the time, agreed on the time as 1:40, each one

about the same. I think perhaps, a few minutes one way or the other, one a little less, one a little more; and that distance from Skamokawa light to this point is five miles, and five miles in an hour and forty minutes, is three miles an hour.

Mr. C. E. S. WOOD: Is that past the land or through the water?

A. Past the land.

Q. You also in one part of your examination said that there was a time when the Samson was approaching you, that her green lights became obscured just prior to the collision?

A. Yes, sir.

Q. I think you ought to explain that a little more fully, how it would be, how you were standing on the oil barge.

A. We were standing on the bow of the barge, and when she passed to a point here, the light was shut out.

Q. That is, when she got fair abeam of you, in passing down to the stern of the Henderson?

A. Yes, sir.

Q. Mr. Minor rather emphasized the fact that you were taking a dangerous chance in running ashore in order to avoid a collision, and that you were willing to take such a chance rather than have a collision, and I will just ask you to explain again whether you expected actually to run ashore, or to avoid that necessity, and how you expected to avoid it.

A. At what time?

Q. When you put your helm hard aport and headed toward the bank?

A. Well, my great anxiety then was to avoid a collision, and what would happen after that was another consideration.

Q. You were, as Mr. Minor says, you were taking a chance there of running ashore?

A. Yes.

Q. I will ask you whether or not you expected to go ashore or to be able to save your ship?

A. I had great fear that we would, because ordinarily, among commercial vessels, their anchors will not let go as quick as that. I fully expected that we would go on the beach, but I hoped that those anchors would drop, and was very much surprised that they were handled so quickly. It is not usually the case.

Questions by C. E. S. WOOD:

You were using the anchors to check her from going on shore, if you could?

A. Yes, that was the idea.

Q. Did you notice when the oil barge was anchored the next morning, how she stood in relation to the point and obscuring the shore line above?

A. Yes, the shore line was hid by this projecting point ahead of her; that is, the shore line proper, above—around this point was not visible.

Q. The Oregon shore line?

A. Yes.

Q. So that the oil barge was in, close in behind,

obscuring the shore line above, I mean?

A. Yes, behind the point, practically.

COURT: Was that Hunt's Mill Point?

A. Yes, sir.

Q. Was it below the point, obscuring the upper shore?

A. Yes, sir, headed upstream.

Cross Examination.

Questions by Mr. SNOW:

I would like to ask a few questions on behalf of the Standard Oil Company.

A. Yes, sir.

Q. You say that you have been a licensed pilot on the Columbia and Willamette Rivers for some 25 years?

A. Yes, sir.

Q. How old are you now?

A. 54 years.

Q. At whose instance did you take in charge the piloting of Barge 93 on the night in question?

A. Well, our—the one in charge of our Association is Captain Pease.

Q. You have a Pilots' Association, have you not, of the pilots, who are doing the pilotage service on the river?

A. Yes, sir.

Q. And Captain Pease is the manager or secretary of that Association?

A. Yes, sir.

Q. Then you didn't have any communication, directly or indirectly, with either the Standard Oil Company, or any officer of the Standard Oil Company before you went on that barge?

A. No, sir.

Q. Now, you knew, did you not, that the Standard Oil Company had a contract with the Pilots' Association, for the piloting of all oil barges at a certain stated prices?

A. Yes, sir.

Q. And as a matter of fact, when you receive your pay for that pilotage service, you receive it, do you not, from the Association?

A. Yes, sir.

Q. And the Standard Oil Company pays the Association a stipulated price for the pilotage of these vessels?

A. Yes, sir.

Q. Now, that is what you mean, is it, by saying that you understood you were in the employ of the Standard Oil Company on the night in question?

A. Yes, sir.

Q. Now, how many vessels have you piloted, approximately, do you suppose, up and down the Columbia and Willamette Rivers during the 25 years of service you have had there?

A. Oh, I couldn't say.

Q. Well, have you had a great many, or only a very few?

A. A great many.

Q. You have been then, in continuing service as this pilot, or as captain of some river steamer, during this entire 25 years, Captain Sullivan?

A. Continually; almost continually; very short intervals.

Q. You are now, you say, 54 years of age?

A. Yes, sir.

Q. Now, you spoke of passing the Kern some little time before you saw the lights of what proved to be the Samson?

A. Yes, sir.

Q. Did you know at the time you were passing the Kern that the Samson was somewhere on the river further up, and coming down the river?

A. Well, yes, I would have known, if I had stopped to think, but I gave it no thought. I know she has a regular time of going. I could have known if I had thought.

Q. Then you knew that from the constant running of the Samson on the river?

A. Yes, sir.

Q. Did you know where she was at the time you passed the Kern?

A. No, I probably gave it no thought.

Q. Now, when you speak of running on that range—what, by the way, is that range called?

A. Hunting Island.

Q. Hunting Island Range?

A. Yes, sir.

Q. You spoke of running on that range up the

river, and of the Kern passing you to starboard?

A. Yes, sir.

Q. You didn't get off your range when that passing took place?

A. No, sir.

Q. Who signalled for the passing to starboard of the Kern—you or the Kern?

A. I wouldn't say. I couldn't say. I don't remember.

Q. At any rate the Kern gave you the range you were on and passed to your starboard?

A. Yes, sir.

Q. Now, when you saw the lights of the Samson further up the river, and just abreast, or pretty nearly rounding the point of Puget Island, you decided to pass the Samson to port?

A. Yes, sir.

Q. Now, had you ported your helm before you blew the first passing signal to the Samson?

A. Yes, sir; was well below the range before this whistle was blown.

Q. Were well below the range?

A. Yes, sir.

Q. What do you mean by being well below the range, and what do you mean by the range opening up? I have drawn a diagram on that blackboard, Captain. It is not drawn to a scale, or anything of that kind, and on that diagram I have located in a general way Bugby Hole and the bluff, and what I suppose to be the Hunting Island Range. Will you

kindly turn that blackboard so the Judge can see it—counsel reminds me that my Hunting Island range I have drawn there by dotted line strikes the bluff. I didn't intend it to be accurate at all. I will move the bluff a little further down. Now, where are the two range lights?

A. Where are they?

Q. Yes. Where are the two range lights located?

A. They are on this. This is known as Hunting Island, and this is the Cathlamet Channel, and one light is on a pile at the water's edge, and one light is back in the woods, I think, on a tree; fastened to a tree.

Q. Then the two lights are right behind each other?

A. Yes, sir; one in range of the other.

Q. And, as long as your vessel traveling up the river on this range can see but practically one light, you know you are on the range?

A. No, the rear light is higher than the front light, so they both show at the same time.

Q. They both show?

A. Yes.

Q. Oh, they both show in line?

A. They show in line.

Q. Then what do you mean by opening up the range?

A. (Illustrating) Well, a person standing at this point would see between these lights. That would be open on that side.

Q. Now, when you speak of getting below the Hunting Island Range light, just before you blew the passing whistle, you mean to the right of the Hunting Island range lights, do you?

A. Yes, towards the sea; towards the general course of the river towards the sea. Towards the sea would be below, and the other way would be above. That is why it is called above and below. That would be the right hand.

Q. The right hand coming up the river?

A. Yes, sir.

Q. And when you speak of well opening up the range light, you mean that you see two lights like that, apparently. That is, you can see between the lights?

A. Yes, can see between them.

Q. Now, is there any light at Bugby—say at this—at the up river—on the Oregon shore, to indicate the range, say, from the lower lights to any upper lights here?

A. No, sir.

Q. Then you steer entirely by the range lights to your stern?

A. Yes.

Q. Now, Mr. Minor asked you, Captain Sullivan, about the question of whether or not had the accident happened on the Oregon side of the river, the Henderson would have drifted down what he called the Prairie Channel, and what I will call the Clifton Channel. You answered no. What is the fact as to

the currents in that neighborhood? And what is the cause of these currents. And in that connection refer to the bluff and the course of the river just before striking the bluff, and how the bluff will divert the current.

A. This bluff, as we call it, it is a little more marked than you show; it is more of a point than you show.

Q. Well, take the chart for it.

A. You see it bears off; the channel makes this turn. That bluff is a spur of the main range of mountains that run along here. It runs directly out in this direction, and the mountain itself, after the point is made, breaks off here, and this is lowland, and that is just a spur running out. The force of the river coming down here strikes this spur, and has changed the whole course of the river, eventually from the Oregon side to the Washington side. It goes clear across from the bluff to the other side, a long distance down, and it changes the whole character of the river, this one bluff. Of course the water strikes here and goes off in this direction. This is only a sand island. (Illustrating by means of chart).

Q. That is Puget Island.

A. And this current has cut straight along down here, and for these 25 years that I have been in the business of piloting ships, or connected with piloting ships, the channel has always been along this island down here, in that direction in which this range is, and never has changed. The deepest water now, is

closest to this bar.

Q. Close to what bar?

A. This bar shown here; this bar; that is a recent formation.

Q. The bar at the foot of Puget Island?

A. Yes, sir. This is a bar; as you go this direction, the water gets shoal, so indicates that the deep water goes here and draws toward that point. This bar in my time was the channel of the river. I have been right over where that is. Coming down Cathlamet Channel, meeting this channel, and that water settling makes that shoal, and before this channel was dredged at all, there was about 23 feet of water at this point; but after the improvements of the river made here, to make the river 25 feet, making it deeper further up, this place had to be dredged, and when this dredging was done, the Government dredger, in order to show where that dredging was—that other people might know where the dredging was—they set up this range, and on that range this dredging was done. So when we were running, we would run on that range, and would get in the dredged channel. Then after a time, at the instance of the Pilots, the Lighthouse Department put lights on that range, so at night time we could run there. We had a great deal of running at night; leaving Portland in the day time, the middle of the day, we would reach down here at night. These little places could be crossed as well at night, if some aid to cross by; that is, while that range was put there for this particular channel,

A. Yes, sir.

Q. Does he belong to your association too?

A. Yes, sir.

Q. I believe he wasn't on duty that night, was he?

A. He was asleep at this time.

Q. Now, Stayton, then, was the pilot in charge of the Henderson?

A. Yes, sir, as I understand.

Q. Stimpson was the Captain?

A. Yes, sir.

Q. And Oleson was the engineer?

A. Yes, sir.

Q. You only know whether or not the Henderson obeyed your direction to port her helm and back, from the testimony given before the Inspectors?

A. Yes, sir.

Q. Was your headway perceptibly checked by the order that you gave? Could you determine that?

A. I didn't determine that.

Q. Then the crash came?

A. Yes, sir.

Q. And the Henderson broke loose from the oil barge, and you gave the order to anchor the barge?

A. Yes, sir.

Q. Did you say it was the port barge of the Samson that rammed the Henderson just forward of her house?

A. I am quite sure it was.

Q. Was the oil barge injured in any way?

A. None whatever.

Q. Now, in anchoring the vessel, did you—when she came up on her anchor chains so that they held, was there any perceptible jerk of the barge?

A. None that I could detect, and I was surprised at that.

Q. What do you mean by surprised at that?

A. Well, that she wouldn't—that her headway had been so much checked that there wouldn't be a straining on them. Of course we had been going along under speed, whatever the speed was.

Q. And you estimated that speed to be about three miles an hour?

A. Three miles an hour.

Q. Up against the current and against the ebb tide?

A. Yes, sir.

Q. And you had given orders to back, and if they were obeyed, that must have checked her?

A. Must check her, and the breaking of these heavy wire lines, I would think would very materially check her.

Q. Now, if the headway had not been checked, what would be the effect on these anchor chains, of dropping them?

A. Would be like stopping a heavy boat with solid iron. As the chain doesn't stretch or give way, if the strain was sufficient, it would break off. It very often happens these anchor chains break, if the headway is not stopped. It is quite a delicate matter to bring a ship to anchor, without—

Q. (Interrupting) Stopping her headway?

A. Yes, without being danger of breaking these chains. A great deal of care is always used in anchoring a ship that her way is off them—the way off the ship, and won't go against that anchor as it touches the bottom.

Q. Did you yourself observe how the anchor chains ran out when the anchor struck bottom? You heard the testimony of Martinson, didn't you, and Kayser? You heard their testimony?

A. Yes, sir.

Q. Did you make any observation yourself as to how the barge came to anchor?

A. I noticed, of course, they ran out rapidly until they struck the bottom. I didn't think the water was so deep, and when I heard the chains running out so rapidly at first, I thought possibly she was running over the anchor. Then when that ceased, I observed there was no motion to the vessel—that these chains wouldn't run out any further.

Q. As I understand you, Martinson, the man on board the barge, let go both anchors, the star-board and the port anchor?

A. Yes, one after the other.

Q. Did either anchor chains break?

A. Oh, no.

Q. You anchored in six fathoms of water, as I understand you?

A. Eight fathoms.

Q. Eight fathoms?

A. Yes, sir.

Q. Did you say how much of the chain ran out?

A. I don't know. I didn't notice. I don't know whether that testimony has been given. I didn't answer the question.

Recross Examination.

Questions by Mr. MINOR:

Captain, there are brakes on these chains to prevent them from causing this jar, are there not,—going out too rapidly?

A. I don't catch the question.

Q. There are brakes on these chains, aren't there, on the anchor chains, I say? The anchors are fixed so that the speed at which the chain runs out may be checked by a brake, are there not?

A. Well, I don't know just how you mean. I don't catch your meaning exactly. Just illustrate the whole thing, the windlass, so I will understand what you mean.

Q. I understood you to say awhile ago, that if the vessel was going too fast when you dumped an anchor, there would be danger of the chains breaking?

A. Yes, the chain would have to be in some manner stopped, or it will all run out; there is a brake.

Q. There is a brake on the anchor chain?

A. Yes.

Q. So as to keep the anchor chains from running out too fast?

A. No, it wouldn't prevent it if the vessel was

going fast. It isn't strong enough for that. It would—

Q. (Interrupting) It would make a pull on the anchor chain, then, all the time, wouldn't it?

A. It would to some extent, yes.

Q. The chains are so adjusted—the anchors are so adjusted that there is a brake to keep the motion of the vessel from running out and breaking the chains. Is that correct?

A. Well, I don't quite understand what you ask.

Q. What is the object of the brake on the chain?

A. The brake is not on the chain. The brake is on the drum over which the chain runs.

Q. What is the object of the brake on the drum then?

A. Well, it would be to check its going to some extent.

Q. And that, of course, would retard the motion of the vessel all the time, would it?

A. Somewhat I judge.

Q. Well, I say it would retard it though. That is the object of it?

A. Yes, sir.

Q. So that when the chains have run out their full length, it is supposed that the force of the vessel would be stopped so that the chains couldn't be broken?

A. No, that is not the idea at all.

Q. What is the idea, then?

A. It would be to stop the—largely to stop the

chain after the anchor is out, or that is intended to be covered by an entirely different motion; if the vessel was going so fast that the chain would continue to run out, beyond the point, this thing wouldn't stop it. It would either run out to its end where it is fast, or, if an attempt was made to brake that, something else would break. It isn't intended for that purpose—to stop the headway of the vessel.

Q. What is it intended for, then?

A. It is intended to stop the chain itself.

Mr. SNOW: When the anchor strikes bottom?

A. Not altogether. Some times when it strikes bottom, or whenever sufficient amount out, if they want to do it. It isn't there to check the headway of the vessel.

Q. What is it put there for, then?

A. It is put there to hold the chain.

Q. To do what?

A. To hold the chain when a sufficient amount of it is out. You understand me about as well as I do you, I guess.

Q. Well, I don't know, Captain, if you don't understand me any better than I do you. That brake is on the windlass, isn't it?

A. Yes.

Q. And what is the object of that brake?

A. It is to stop the chain at any point at which they want to stop it.

Q. To control the anchor, isn't it?

A. Not altogether.

Q. To some extent, isn't it?

A. To control the chain.

Q. That is part of the anchor?

A. Not necessarily.

Q. Then what is the object of it—to control what?

A. To control the chain.

Q. What is the object of controlling the chain, then?

A. Well, there would have to be some point at which the chain would be stopped from going out.

Q. If you came to the end of the chain, it would stop, wouldn't it?

A. They don't usually let it go that far.

Q. That is to keep it from going that far?

A. Yes, it would depend somewhat on circumstances.

Q. And that brake is strong—gets stronger and stronger as the chain goes out, does it?

A. It would only stand a certain—it is not made to stand the strain of the vessel, so it would eventually stop, in the circumstances in which the chain runs out.

Q. I say the chain is so fixed that the more chain you let out, the stronger the brake is on the chain going out, isn't it?

A. No, not fixed at all, controlled by the man who operates it.

Q. By the man who operates—

A. (Interrupting) The man who operates the brake. The brake in this particular instance is a

compression band controlled by a screw, and that screw is turned and brings that compression tight or loose, as the case may be. If this brake was left open, that chain would run out—it wouldn't interfere with its going out at all, so this man would tighten up that compression to suit himself.

Q. And he does that for the purpose of keeping the chain from running out too rapidly??

A. Yes, that would be to some extent.

Q. What is his object in tightening up, if that isn't it?

A. His object would be to keep the chain from running out.

Q. Too rapidly?

A. Yes.

Q. Now, you said something about the anchors striking the bottom. Do you know when the anchors struck the bottom that night?

A. I could tell.

Q. How could you tell?

A. By the way the chain acted.

Q. That is the only way you could tell?

A. Yes.

Q. You couldn't tell any other way?

A. Well, that would be sufficient.

Q. There would be no jar, would there?

A. Not necessarily, no.

Q. Well, was there any jar?

A. None that I heard.

Q. So, when the anchor struck the bottom, you

don't know of any jar being caused by that?

A. No.

Q. You didn't feel any?

A. No.

Q. Captain, I understand you were on the ranges when you first saw the Kern?

A. Yes, sir.

Q. And that there is a custom in these waters for the vessel with the deep draft to have the right of way on the ranges.

A. Yes, sir.

Q. And that therefore you kept the ranges when you met the Kern?

A. Yes, sir.

Q. And you can't tell whether you signalled the Kern first, or whether the Kern signalled you.

A. I don't remember.

Q. Now, the draft of the Kern, and the draft of the Samson is about the same, isn't it?

A. I have heard so.

Q. Well, I believe you said they drew about the same amount of water?

A. I don't think I said so.

Q. I think you put one of them at 14 feet and the other at 15.

A. I said I thought that was what they drew.

Q. Why, when you saw the Samson, did you not observe the same rule that you observed when you saw the Kern?

A. When we passed the Kern, we were over this

shoal. When we passed the Samson, this shoal had passed by. The river was deep all the way across.

Q. But if the custom is for the vessel with the deeper draft to keep on the ranges, having the right of way, then why should you have acted differently when you saw the Samson?

A. The range has nothing to do with the channel at this point that we passed the Samson, or tried to pass her.

Q. That is true, but I understood when you first saw the Samson you were on the ranges?

A. Yes, sir.

Q. Now, why did you at that time leave the range?

A. As I said before, the range has nothing to do with the channel at the point in which I first saw the Samson. This range is used for a channel, as I described, at this little part, at the point at which we passed the Kern, but the point at which we passed the Samson, the range has nothing to do with the channel at all. It is simply there, and is used only as a guide to determine the side of the river.

Q. Well, I understood you to say, Captain—I may have misunderstood you—that the rule here in these waters is that the vessel having the deep draft shall have the right of way?

A. I didn't say that.

Q. You didn't say that?

A. No.

Q. You said that was the custom here, didn't you?

A. No.

COURT: He referred to the shoal in the first instance.

Mr. MINOR: I didn't understand. I understood him to say that was the custom.

Q. Now, Captain, you have said now that the port barge of the Samson struck the Henderson.

A. Yes, sir.

Q. Did you see it?

A. Yes, sir.

Q. How far were you from it?

A. How far?

Q. Yes.

A. Well, to be exact, we estimate that the bow of the Henderson was 100 feet from the stern of the barge—the oil barge, I mean—93—and the barges' length is 280 feet; that would leave the bow of the Henderson about 180 feet from the bow of the oil barge, and I was standing, what I estimate to be 25 feet back from the bow of this oil barge; subtracting from 180 would leave 155 feet, about, from where I stood to the bow of the Henderson. Then I estimate that the break in the bow of the Henderson made by this port barge of the tow of the Samson, was 15 feet from this stem; subtracting from 155 would leave 140 feet from where I stood to this break in the bow, or where she struck. That is as near exact as I can make it.

Q. Why do you subtract that? It seems to me you ought to add that oughten't you?

A. I will take it back.

Q. Yes, you should add that?

A. Yes.

Q. So instead of being 155 feet, you would be 205 feet?

A. No, 15 feet to be added to 155, would make 170 feet.

Q. You would add 30 feet to 155.

A. No, I didn't. I added 15.

Q. Let's see again, now. I understand, from what you have said that the bow of the Henderson was 100 feet from the stern of the barge.

A. Yes, sir.

Q. That the barge is 280 feet long?

A. Yes, sir.

Q. Then the bow of the Henderson was 180 feet from the bow of the barge?

A. Yes, sir.

Q. And how far were you from the bow?

A. 25 feet.

Q. 25 feet. That means 155 feet?

A. Yes, sir.

Q. So you add 15 feet more?

A. Yes, sir.

Q. That makes you about 170 feet, doesn't it?

A. Yes.

Q. Any lights on the boat by which you can see?

A. Any lights where?

Q. On any boats by which you can see.

A. What boats do you refer to?

Q. Any of them by which you could see where

this rock barge struck the Henderson?

A. Lights on—please designate what boats.

Q. All of them. I don't care. Any of them or all of them. Any or all of them which enabled you to see the place.

A. Well, there were side lights on the Samson. There were side lights on the other two. Do you mean the reflection from these lights would reflect on the bow of the Henderson, making it light enough for me to see—is that the idea?

Q. I mean, were there any lights on any of the boats to enable you to see where the rock barge struck the Henderson?

A. No.

Q. That was just by the light of the night that you saw it?

A. Yes, sir.

Q. Now did the middle barge of the Samson strike the Henderson?

A. I don't know.

Q. Well, from the course which she was pursuing, would you strike?

A. I would think so.

Q. You don't think so?

A. I would think so.

Q. You would think so?

A. Yes.

Q. Where would you think that would strike?

A. Well, I couldn't say. That would be behind the house, or beyond the house, beyond my point of

vision.

Q. So you couldn't say where it struck? You say the oil barge is absolutely uninjured.

A. Absolutely.

Q. Was there any paint rubbed off?

A. A little.

Q. Whereabouts?

A. About abreast of where the bow of the Henderson was.

Q. Was it not in front of where the bow of the Henderson was?

A. I don't think so. I don't remember seeing it there.

Q. Now, Captain, I think on your examination before, you said it was in front of that?

A. Well, I don't remember.

Q. If it was, as a matter of fact, in front of where the bow of the Henderson was, that paint was not rubbed off by the Henderson, was it?

A. Well, it might have been rubbed off prior to this time when the Henderson came along in the evening. She came alongside quite a length along there, made her line fast and pulled back to where she was finally made fast, and she might have rubbed along there considerable. That would be possible.

Q. It couldn't occur at the time of, or after the collision, could it?

A. I wouldn't think so—not by her.

Q. Not by her?

A. For I think she went away from the point.

Q. I understand now that the green light of the Samson was in view all the time from the time you first saw her until the bow of the foremost barge of the Samson passed where you were?

A. I think so; about that time.

Q. Had the Samson passed where you were at the time of the collision?

A. Yes, I think she had, her entire full length I would think; let's see. Well, I don't know exactly as to that. I don't remember.

Q. You don't remember whether she had or not?

A. No.

Q. Captain, when you signalled the Samson, what signal did you give? I didn't understand.

A. When?

Q. When you first signalled the Samson?

A. One whistle.

Q. Long or short?

A. Medium long.

Q. Well, would you call it a long blast or a short blast, under the rules?

A. Well there is no—I don't know of any length designated as long and short. I don't know what a long and short blast would be.

Q. You know the rules speak of a short blast.

Mr. SNOW: We don't want to be particular about this, but it seems to me this is hardly recross. This has all been gone into before. I don't want to be captious.

COURT: There has been a great deal of repeti-

tion. Nearly a day and a half on the first witness.

Mr. MINOR: I understand that, but I merely want to understand what it was. I understood from Mr. Wood's examination that his testimony was somewhat different from what I understood it was on my cross examination. That is the reason I want to be sure. I don't desire to prolong the matter at all, but I understood him to say at the time Mr. Wood was examining him, that he gave one long blast of the whistle. Now, I understood before that he said one short blast, so I just want to see whether he gave one long or one short blast.

COURT: The court's recollection is he said one blast.

Mr. MINOR: He said he gave one blast, and I want to know whether he said one long or one short blast.

COURT: What is your recollection about that?

A. An ordinary blast as used in passing. I don't recollect in particular. Long enough so the other boat would hear it plainly, but no particular—

Q. (Interrupting) Now, the rule to which Mr. Wood has called your attention, Rule 11 reads as follows: "In obeying and construing these rules, due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger." Now, what is there in that rule which would change the ordinary rule of passing vessels?

Mr. SNOW: If your Honor please, that asks for the construction of the rule. He can't ask this witness to construe the rule. I don't want to be captious about the matter, but the rule is in evidence. If the counsel wants to put in the rules for his own construction, we will put our construction on the rule.

COURT: The rule is a matter of construction for the Court. The way we understand that rule, it is a general rule anyway, for emergency and all cases.

Mr. MINOR: I know that, and I just want to find out from him what there was in the situation which would cause that rule to have any application. Surely I am entitled to know what there was in the situation.

COURT: You may inquire.

Q. What was there in the situation there at that time which caused that rule to have immediate application?

A. I think that what brought up this answer, my answer to the Judge, why I quoted this rule, you asked me the question why, instead of blowing one blast of the whistle at that time, I didn't blow the danger whistle, and wait for an answer to this danger whistle from the other boat, and then act on the danger whistle. I said that the time lost in trying to blow a danger whistle at that time would be a foolish waste; that that time should be used in trying to get away so that these barges would not get together, and I quoted this rule that says that under all circumstances, practically says, all regard shall be had for the safety of the vessel, regardless of the technicality

of rules, which are only made—which are only things devised to serve the best purpose in a general way.

Q. Well, that is the rule to which you refer, the one that I have just quoted, is it?

A. Yes, sir.

Q. Now, Captain, I wish you would come down and look at this new chart. Mark on this new chart where the Kern was when you passed her.

Mr. SNOW: Hasn't that already been gone into?

Mr. MINOR: Not on this chart.

Mr. SNOW: We didn't ask him anything about that.

Mr. MINOR: This chart they have offered in evidence.

COURT: He may answer the question. There has been more or less repetition all the time.

Q. Mark on this chart where the Kern was when you passed her.

A. On this chart there is not the same things there were on the other chart. It showed the bar there. This bar was especially spoken of.

If you will locate this bar on that chart, I will locate it.

Q. Just say you can't locate where the Kern was, if you can't.

COURT: That is the way the Court understands his answer now.

Q. You can't locate where you passed the Kern on that chart, then?

A. No. (Referring to Exhibit 2).

Q. Now, as I understand it, at the time you saw

the Samson, you were at the point marked F on this chart?

A. Yes, sir.

Q. Now, I understand at that time that you didn't whistle?

A. No, sir.

Q. I understand at that time you did give—you put your helm to port?

A. Yes, sir.

Q. Did you put it hard aport, then?

A. No, sir.

Q. Now, I understand on this chart that at the point marked 1, you gave the first signal to the Samson?

A. Yes, sir.

Q. That at that time she was at the point marked L?

A. Yes, sir.

Q. I understand that on this chart you gave the second signal at the point marked 2?

A. Yes, sir.

Q. And that the Samson at that time was where?

A. This point marked I.

Q. The point marked I. And where did you locate the collision on this chart?

A. I didn't locate it.

Q. Well, locate it, then.

Mr. ERSKINE WOOD: Put the circle and line leading to it. This circle and the line leading to it is marking the point of collision on Plaintiff's Exhibit 2.

Q. In answer to Mr. Wood's question, you said you were of the opinion that you didn't testify before the inspectors that at the point where you gave the second whistle you were about 200 feet from the Samson, but that you did testify that you were about 400 feet.

A. Repeat that question again, please.

(Question read.)

Mr. SNOW: All that has been gone over on cross-examination.

Mr. MINOR: Mr. Wood was explaining something in regard to that.

COURT: Mr. Wood's last examination.

Mr. C. E. S. WOOD: Redirect on his cross.

Mr. SNOW: He went into that time and time again.

Mr. MINOR: I asked some questions for the purpose of showing he testified he was 200 feet from it. Mr. Wood undertook to show he had testified before another examiner.

COURT: Where you spoke of two records. Objection sustained.

Mr. MINOR: I desire to show all the record in this case and will offer in evidence.

COURT: That goes in rebuttal of the fact he made the explanation of. He has given an explanation.

Mr. MINOR: I understand, your Honor, but if you will allow me just one word. I think the rule is—but if your Honor prefers the other way, of course you can regulate the manner of taking proof—I un-

derstand the rule is, if you wish to impeach a witness, you must do so by asking the questions while he is on the stand. Therefore I would not be allowed to offer the record for the purpose of impeaching him afterwards. Now, I called his attention to one place in this record; there are four places in this record where he testified to 200 feet. I only called his attention to one.

COURT: Then the other side insists on the exact manner of date and time.

Mr. SNOW: If we are ever to end this trial -

Mr. C. E. S. WOOD: I want to mention this. My view in all of these cases is to get at the truth, and I don't personally insist on technicalities, but want it clearly put for the benefit of the court; but when it comes to impeachment I insist this: In the first place, there is no possibility of impeachment. If Captain Sullivan's testimony will be turned to, he says this: "I don't think I said 200 feet at that last examination. I may have said so, but I think it is a mistake. Anyway, my present belief is 500 feet." Now, he didn't say positively that he never had said that, so that the whole thing of impeachment would fail, and if counsel insists on going on with it, I will insist that the regular technical form of impeachment be followed.

COURT: Proceed.

Q. Now, Captain, you remember when you were examined by the inspectors in the matter of the trial of Charles Jordan before the U. S. Inspectors of Boil-

ers and Hulls on the 2nd day of August, 1911. Do you remember that time?

A. Do I remember the trial?

Q. Yes.

A. Yes, sir.

Q. You remember that time?

A. Yes, sir.

Q. You were examined at that time by the inspectors, were you?

A. Yes, sir.

Q. I will ask you whether or not, upon that examination, in answer to questions put to you by Inspector Edwards as follows: "Captain, you claim that you gave the order when the second whistle was blown, or just prior to the accident, you gave a port-the-helm, hard over? A. Hard aport. Q. Hard aport? A. Yes, sir. Q. And you kept it that way until—A. It wasn't moved after that. Q. Never moved after that? A. I gave no further orders in regard to it. Q. About how long before this accident did you give this order? A. Well, I would think that we were at that time 200 feet apart, it seemed to me, and I should judge—of course, the question of time would be hard to determine how long that would take. It might have been a minute's time, it might have been a fraction more or less. That I couldn't determine. It is a time a person does not think of time, he has so many other things to think of." Did you so testify, Captain, at that time and place?

A. I don't know. I suppose—that is all the record I have. My recollection is not very clear on it, a year and a half ago.

Q. Now, Captain, I understand you to say now, that in coming down the river, the channel sets from the bluff over towards the Puget Island side. Is that correct?

A. Yes, sir.

Q. Now, where does the channel strike the Puget Island side?

A. Where does the channel strike the Puget Island?

Q. Where does the current strike the Puget Island side.

A. What am I to understand by channel?

Q. I say the current.

A. Oh, the current? Well, I think about the foot of the Island.

Q. Strikes about the foot of the Island?

A. Not exactly the foot, but in that direction, close to the foot.

Q. So, in your judgement, the current sets from the bluff on the Oregon side to the foot of the Island?

A. I didn't say that.

Q. Well, what did you say?

A. I said the channel of the river, or the deepest part of the river—this bluff makes one bank of the river, and Puget Island makes the other bank of the river, and the river, according to the chart, at that point, is about 1800 feet wide, so that to run from the

bluff to the point of Puget Island would be diagonally across this river, so that wouldn't be reasonable.

Q. I didn't ask that in that form. I say, I understood you to say that the current sets from the bluff across the river towards the lower end of Puget Island.

A. You misunderstood me.

Q. How does it set from the bluff?

A. I don't think I said anything about that. I have no recollection of saying it.

Q. How does it set from the bluff?

A. It sets straight towards Tenas Illihee.

Q. Towards Tenas Illihee?

A. Straight down, about straight down the river from there.

Q. It don't set over towards the Puget Island side at all?

A. Not starting from the bluff.

Q. Where does it set over to the Puget Island side?

A. Well, it starts from where it makes the turn further up into the bend. The point I don't just know how it would be designated, but it is up above the point in the bend of this bluff, more in Bugby Hole; it makes a turn, starts from there, and goes on its course.

Q. And from that point it sets in what direction?

A. It sets toward, gradually toward Puget Island.

Q. There are shoals along Puget Island, are there not?

A. No, a little bank there.

Q. I understood you to say a seining ground.

A. A little bank there, but below there water deep to shore.

Q. That seining ground is about where?

A. About the position where this collision occurred.

Q. That seining ground is below Ostervolt's house or below the slough above Ostervolt's house?

A. Below the house, but below that seining ground the water is deep; only a little bank from the island for some cause.

Q. How long is that seining ground?

A. I don't know.

Q. Now, Captain, do you remember the time and place when you were examined before the Inspectors at the trial of Charles Jordan?

A. Do I remember?

Q. Yes.

A. Yes, sir.

Q. I will ask you whether or not at that time and place and in answer to questions put to you by Inspector Edwards, you didn't testify: "How long does it take to drop the anchor from the time you gave the order? A. Well, it was instantaneous, to my notion.

Q. And you thing that about a minute from the time of the collision until the time you dropped the anchor? A. Yes, it was. I presume that it was consumed, that much time consumed by the men getting there." Did you so testify?

A. I don't remember that I did, but if it is in that record, I presume so. I don't remember those questions exactly.

CORT: How much time did that say?

Mr. MINOR: One minute, your Honor.

Mr. C. E. S. WOOD: What is the point of that? It seems to me to be about the same he says now—
instantaneous.

Mr. MINOR: Now, he testifies it wasn't any time; before he said it was a minute.

Mr. C. E. S. WOOD: I don't believe you can impeach a man on these estimates of time. They are mere matters of guess and opinion.

Q. Captain, I will ask you to state whether, upon this examination, in answer to a question put to you by Inspector Edwards, you didn't testify as follows:

Mr. C. E. S. WOOD: Better identify that as the trial of Captain Jordan. There were two examinations.

Q. This is the trial of Captain Jordan. I am reading from pages 27 and 28: "I have no means of estimating, only by that way. I would defy any man to locate his position in that river by observation at that time, and the conditions of darkness, that could correctly state where he was at that time. This is a high bluff. It throws a deep shadow. This low land has all one appearance. It is a row of cottonwood trees, which are all similar in appearance, and it all looks alike. You could not say 'I am abreast of this point', or 'abreast of that point,' or 'in this position

or the middle. I defy any one to correctly make such a statement and to be correct. My only means of knowing was the position that this barge was in the next morning, or after it got daylight, so I could see, and the length of time it took from the collision until these anchors fell, which of course, has been verified by witnesses or men who heard the sound. And I defy any one to say that he was in the middle, or to one side, or the other side, because, unless he was very much to one side or the other side, or anywhere near any point in there, that he could say "I was here" or "I was there," I think it is impossible." Did you so testify?

A. I would like to make an explanation.

Q. Well, did you so testify?

COURT: Answer that, yes or no, then if you have an explanation to make, make it afterwards.

A. If it occurs in the testimony, I presume that I said it. I don't question—

Q. Go ahead and make your explanation, Captain. I have no objection.

A. I think that answer was provoked and possibly was led up to by some other thing, but was provoked by the statement made by the other side, who on several occasions, testified that they came up out of their sleep and looked out—the crew of the *Samson* I refer to, and said that they were 200 feet from the island shore, or 500 feet from the island shore, various distances, estimated distances, from a certain shore. And I think that this answer was provoked

from these statements, that any man couldn't tell by looking directly at shore, without reference to lights, whether he was any particular distance from shore; but if he will use the range or some other thing, that would entirely alter the situation.

Q. But you did so testify, did you, at that time and place?

A. I testified what is in that record. I have no doubt that I did.

Mr. ERSKINE WOOD: Will you read the rest of it?

Mr. MINOR: You can. I don't care to.

Mr. ERSKINE WOOD: Didn't you also then immediately following, testify as follows: "But have you an opinion that you were in closer to the Oregon shore than the Washington shore? A. Well, it appeared so that I was headed for that. It appeared so from the location of these lights, knowing where they lead to, and knowing the position of these lights, I watched those to see at all times that I kept to that side, by these lights. I know where they run out. I have observed them very often. These things, of course, come under my observation, because that is my particular line of business to see that thing. And coming there in the night, it is necessary for me to know, with a deep draft vessel, what location, or how I should proceed in there, and these lights had been used before, frequently, in passing ships, to get out of the channel by going below this range, and I used them a great deal both going and coming." Did you

so testify?

A. I did, if it appears in that record.

Mr. SNOW: This has all been gone into before.

COURT: On redirect, he was asked if he had some other way of determining where he was than where he found himself that morning.

Mr. SNOW: And the questions read to the witness have been read before.

Q. Captain, look at this diagram, Libellant's Exhibit 2; if the course pursued by the Samson was as you have indicated on this chart Exhibit 2, under what kind of helm was she going from the letter J to the letter K?

A. Well I would think a very—

COURT (Interrupting): That might be opening up a new matter and will be a subject of redirect.

Mr. MINOR: I merely want to find out about this course. I think I should be able to find out what helm he was under.

Mr. GUTHRIE: Witness Sullivan only testified this to be an approximate idea. Every little deviation cannot be considered a new helm.

COURT: I don't think so.

Mr. MINOR: I desire to show by this witness, and offer to show that if the Samson ran on, or approximately on the course indicated by Exhibit 2, offered in evidence on the part of the Libellant, that between the letter K, where the Samson was first seen, and the letter L, the Samson changed her course, and that between the letter L and the letter I, the Samson

was running on a steady helm without porting or starboarding her helm.

COURT: That would be this witness' opinion.

Mr. MINOR: It would be necessary if they went that course.

Mr. C. E. S. WOOD: Mr. Minor, these courses laid down don't pretend to delineate the exact course of the vessel. They are only illustrative.

COURT: Offer denied. Exception allowed.

Q. Captain, I will ask you to state whether upon the trial of Captain Charles Jordan, on the second day of August, 1911, before the Inspectors of Boilers and Hulls, you didn't testify, in answer to a question propounded to you as follows: "The only means, I understand, Captain, that you have by which you determine where that collision actually took place was that you judged it was at that place from the place where your barge anchored; is that right?" A. Exactly." Did you so testify?

A. I think so.

Mr. ERSKINE WOOD: Your Honor, if Mr. Minor continues on this same line of examination, I wish also to show that the witness in the same examination, following that, explained about the range light. It is simply a repetition of the same thing.

COURT: You have already shown that by your former question.

Mr. C. E. S. WOOD: It ought to be shown in some way, though, that these answers exactly are not literally true, because right on the same page, he fol-

lows by showing that he did use other means.

COURT: You may so show.

Q. Now, Captain, I will ask you to state whether, upon your examination, upon the trial of Charles Jordan, you didn't testify, in answer to the question propounded by you to Inspector Edwards, as follows: "That was where you were at when you sighted the Samson? A. The Samson with her tow approximately opposite this point here. Knowing the character of the Samson and her tow, which is, of course, somewhat unwieldy, I hauled off—I was running on this range, as indicated by this mark; I hauled off to this side of the range, or this side of the channel, knowing by this range of lights that I was in that position, and kept approximately a course that would lead to this side of the channel, and when we were about half a mile apart, I judge a half a mile apart, I blew one long blast of the whistle, of the steam whistle of the barge. I was standing on the forecastle head of this barge, which has an unobstructed view forward, using the wheel, or the rudder of the barge to steer with. In the pilot house was stationed the quartermaster, steering, and beside me was the look-out or officer on deck at the time. The Samson promptly answered our whistle. We continued on this course towards this shore. Q. Towards the Oregon shore? A. Yes, sir; heading towards the point of this bluff. This point is formed by a bluff, which is more prominent than is indicated by the chart. And at all times was below this range of lights. They were open on

this side, this indicating below. I saw plainly the Samson's lights, saw two lights of her masthead, the two side lights and one light which appeared to be on the starboard side of the barge, or the starboard side of the tow. Her lights were at all times visible to me, and she appeared to be bearing down on the course in which we were steering, and as I was near this shore in a way that alarmed me, as far as nearness, and her both side lights still in sight, I blew another whistle as a warning, which I didn't hear answered. I didn't notice that. She still continued on her course, and it looked like a point in which a collision would be inevitable; I ordered the helm of the barge hard aport and headed her for the shore. The Samson approached and the port barge of the tow appeared to strike the Henderson about the house on the port side, immediately after the house, of course it broke her away from the tow, and I immediately ordered the anchor let go, which was promptly done and when we swung in to anchor, we were approximately 150 feet from this shore." Did you so testify?

A. Yes, sir.

Q. Is there any light on the Oregon side in this neighborhood of the accident?

COURT: He has already said no.

Mr. MINOR: I know, but I think he is mistaken.

A. Please designate the neighborhood referred to.

Q. From anywhere near the place you first saw the Samson.

A. Is there any light on the Oregon shore?

Q. Yes.

A. What point?

Q. Anywhere where you first saw the Samson and the place where you were when you first saw the Samson?

A. That is, between where the Samson was when I saw her, and me. That is the light would be below where the Samson was, as I understand, down the stream from the Samson.

Q. I didn't say downstream. I want to know whether any light, anywhere on the Oregon shore between the point of the shore opposite where the Samson was when you first saw her and the point where you were at the time you first saw her.

A. There is a light at Bugby.

Q. Where is Bugby on the map there.

A. That isn't a map.

Q. Well, on the chart?

A. Well, I don't see the chart.

Q. You can't locate Bugby here?

A. I won't undertake to. There is a map there with Bugby located on it.

Q. You can't locate it on this chart?

A. I could.

Q. Do so.

Mr. C. E. S. WOOD: Do the best you can.

A. (Indicating) Bugby Light is about this point.

Q. That is about opposite where you saw—where the Samson was when you first saw her?

A. I don't know where the Samson was when I

first saw her. I only approximated; she was in that neighborhood.

Q. Did you see that light at the time you saw the Samson?

A. Yes, sir.

Q. And you couldn't tell whether that light was nearer, or the Samson was nearer?

A. No, sir.

Mr. C. E. S. WOOD: Mark Bugby Light on Libellant's Exhibit 2. (Witness does so.)

Redirect Examination.

Questions by Mr. C. E. S. WOOD:

Whom did you say was Captain of the Henderson?

A. His name was Stimpson.

Q. He is dead now, isn't he?

A. Yes, sir.

Q. And who was pilot of the Henderson?

A. Stayton.

Q. Whom else did you speak of?

A. The assistant engineer, Oleson.

Q. They all took orders from you in navigating?

A. The captain and the pilot would, but the engineer would take orders from the pilot or the captain.

Q. And from you through them.

A. Yes, sir.

Q. In other words, the captain and the pilot didn't originate any orders?

A. No, sir.

Mr. C. E. S. WOOD: I think it is clear to the

court, but we have to keep the appellate record in mind. I am going to ask Captain Sullivan under what circumstances is this courtesy or custom of the road, to give the deeper draft vessels right of way applicable, and what condition of the river and location?

A. Only on places that are shallow, that are dredged, and outside of the dredged channel; on these shoals there is not sufficient water for deeper draft vessels to float. The river has been improved to that extent. Originally the channel was not deep enough for the draft of vessels that now go up and down, and consequently these dredged channels were formed, and outside of them the shoals still remain. They are merely gutters, as it were, sluiced out with dredges.

Q. Which of these examinations took place first? The one where the inspectors examined into the matter for themselves, or the one where they put Captain Jordan on his trial?

A. The one in which they made the examination for themselves.

Q. And that is the one in which you said your distance at the second blast was 500 feet?

A. Yes, sir.

Q. Now, you were asked by Mr. Minor, a question about the only way you had to determine the place of the collision would be the location where you found your barge anchored the next morning, and you said "Exactly." I will ask you if on the same page (68) of the record of the trial of Captain Jordan

you didn't follow that up like this: "And your barge was anchored about one hundred and fifty feet from the shore? A. I will go a little further with that. The only way, I judge of the distance from the shore; but, of course, being acquainted with this shore line here I judge of the position at a cross angle of about the position we were in with reference to the river, up and down the river; but as to the distance from shore I have no means of knowing excepting by this position the barge was in, other than my general knowledge of the river banks, how they appeared. But to be exact about it I have no way of knowing except by the position in which the barge was anchored." Question by Captain Edwards: "That is the oil barge? A. Yes, sir. Q. Now, Captain, I understood you to say that the night was so dark that you could not tell with accuracy where you were in the channel; is that correct? A. Yes; that is in the main correct. Q. On a night like that no man could navigate this river and locate himself accurately with reference to the shore? A. With reference to the distance? Q. With reference to the distance from the shore? A. That is in reference to the number of feet? Q. Or with reference to his location in the river? A. Oh yes; he would have to do that or he could not go up and down the river. Q. If he could tell where he was in the river, why is it he would not know where he was from the shore? A. Now, we will say, for instance, my knowledge of this river is exactly how it appears in the day time or how it ap-

pears in the daytime. I go there very often and I observe it. Then I know that between these shores there is deep water. If I don't go exactly in the middle of that river, or if I go a little to one side or the other it is immaterial. So consequently, I don't give it the attention so at any time I can say I am exactly fifty or a hundred feet or two hundred feet from this shore; but I know that this light here, or these lights here in the range, they lead in a certain direction approximately in the middle or to one side, and my knowledge of all the conditions surrounding that I could tell approximately where I was, whether I was abreast of the foot of this island or this seining ground here, or this bluff; but I could not say I am exactly one hundred and fifty feet or one thousand feet from that shore. I say that is impossible for any man to do." Is that substantially your testimony you believe?

A. Yes, sir.

Witness Excused.

EDDIE GROVE, a witness called on behalf of the libelant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Where you yo live, Eddie?

A. Puget Island.

'Q. How long have you lived there? About, I mean.

A. Well, I have been since I came there first, was

24 years.

Q. What is your business?

A. Fishing.

Q. For what?

A. For salmon and steelhead and sorts of fish like that.

Q. What kind of fishing gear do you use?

A. Drift nets.

COURT: What kind of nets?

A. Drift nets.

Q. About how long are they?

A. Well, between 150 fathoms to 300 fathoms.

Q. Where were you on the night of the collision between the Henderson and the Samson?

A. I was there on the river.

Q. Fishing?

A. Yes, fishing.

Q. Who was in the boat with you?

A. Martin Loaland.

Q. What sort of a boat do you use?

A. Gasoline boat.

Q. About how long is she?

A. About 26 foot ten inches long and eight feet wide or eight feet deep; five horse power engine machine.

Q. Where do you lay out your nets to start to drift? About what part of the river, I mean.

A. Just below that point there at that time.

Q. Below the high bluff?

A. Yes.

Q. The bluff on the Oregon side of the river?

A. Yes.

Q. And which end of your net do you lay out first?

A. Towards the Oregon side, towards the bluff there.

Q. And where does the other end of your net lay at, when you have finished laying out?

A. On this range line.

Q. About on the range?

A. Yes, somewheres around there, close on the range.

Q. Is your net straight across the channel, or at an angle? Do you know what I mean by an angle?

A. No, not exactly.

Mr. C. E. S. WOOD: Speak a little louder, will you please.

A. No, not exactly know what he means by an angle. We lay it out across, right across, as near as we can.

Q. Now, why is it that you don't want your—the east end of your net to go beyond the range? Why is it you lay it out about on the range?

A. Well, in one way, if we get on the other side, why it draws too close off to the island, and there is snags and things that destroy our nets.

Q. When you lay out a net with its west end toward the bluff, and its east end out on the range, how does it drift?

A. Straight down on the range. It follows the

range. Kind of draws in a little toward the island side or Washington shore.

Q. That is the east end of the net keeps about on the range, or draws slightly towards the Washington shore?

A. Yes.

Q. Now, you tell the Court how the currents are there when the tide has been a nine foot tide, and is at half ebb, how do the currents go?

A. Well, at that time the currents go towards—straight down until it gets towards—until it strikes the shallow water there around the point of Tenas Illihee, and from there it goes right towards the Washington shore, after it gets below the island.

Q. A little louder.

A. I say from that point at that time, the tide, it goes about straight down.

COURT: The current?

A. The current, yes; it goes straight down toward Tenas Illihee, and from there it strikes the shallow water, so it turns toward the Washington shore. I don't mean straight across the river, but slantways down. The tide goes toward that side.

Q. Well, when you lay out your net as you have described it, up by the bluff, is there any current which sucks your net down the Clifton Channel or not?

A. Not at that time.

Q. Not at what time?

A. At that time.

Q. You mean not at that stage of the water?

A. Not at that stage of the water.

Q. How far down the river do you drift from the bluff?

A. Just below that sand bar there, below the point of the island.

Q. Have you any idea—which island do you mean?

A. Puget Island.

Q. Have you any idea how far that is—how long your drift is?

Mr. SNOW: In distance.

A. Well, I don't know exactly how long it is.

Q. After you finish your drift, what do you do? Where do you go?

A. Well, we haul our nets in the boats and then we go back again to the tow head and wait for our next chance.

Q. What is the tow head?

A. Well, there is lots of boats laying there, and we have so many minutes between each time.

Q. You take your turn drifting?

A. Turn, yes.

Q. Yes, but I just want to know what the tow head is.

A. It is the place where the fishermen stops.

Q. Where they tie up?

A. Tie up, yes.

Q. And about where is the tow head?

A. Well, it is a little ways above the lower end

of the island there.

Q. Which island?

A. Puget Island.

Q. A little above the lower end of Puget Island?

A. A little ways above that.

Q. And about how far out from the shore? Is it close to the shore, or far out, or how far is it?

A. Just as far out as we can float there on any tide.

Q. As far out as you can float on any tide?

A. Yes, about 40 fathoms or so from real dry main land.

Q. Where were you and what were you doing when the Henderson and the oil barge passed you that night?

COURT: Are you going into that phase of the examination now?

Mr. ERSKINE WOOD: Yes, sir.

COURT: We will adjourn until 1:30.

Portland, Ore., Wednesday, Jan. 8, 1913, 1:30 P. M.

Mr. ERSKINE WOOD: Mr. Minor has not gotten here yet, your Honor, and in his absence I might read a short deposition which I wish to put in.

COURT: He is familiar with it?

Mr. ERSKINE WOOD: He has a copy of it.

COURT: Very well.

Mr. C. E. S. WOOD: How about objections to that? Are they reserved to be made at the hearing?

Mr. ERSKINE WOOD: I guess they were; nothing said in the stipulation about it.

Mr. C. E. S. WOOD: He might want to make some objections to it.

Mr. ERSKINE WOOD: No, they weren't; they were made at the time.

Deposition of William Kalberg offered in evidence, and Marked "Libellant's Exhibit 3" and read to the Court.

EDDIE GROVE, Resumes the stand.

Direct Examination continued.

Questions by Mr. ERSKINE WOOD:

Where were you lying in your boat on that night of the collision when you first saw the Henderson and the oil barge coming up the river? Where were you?

A. On our tow head.

Q. Can't you speak up a little louder?

A. On the tow head.

Q. And did you wait at the tow head any length of time, or not?

A. Oh, we waited there a little while.

Q. Why did you wait at the tow head?

A. For to come my turn.

Q. To get your turn?

A. Yes, sir.

Q. I will ask you whether or not it was part of your object to lie at the tow head until the Henderson could get by you? Was that in your mind, or not?

A. No, not necessarily.

Q. Did you understand what I mean?

A. I think I do.

Q. I just want you to be sure you understand what I mean. I mean, you were lying at the tow head and saw the Henderson coming up the river down below you? That is right, isn't it?

A. Yes.

Q. Now, did you lie at the tow head partly with the object of waiting until the Henderson could pass you and be out of the way of your drift, or did you not?

A. No, not really. We was mostly—most of the time was waiting for our turns.

Q. All right. I thought you told me you did, and I just wanted to be sure you understood. Well, then, when it came your turn to lay out your net, you went and laid it out and commenced to drift down. Is that right?

A. Yes.

Q. Now, then, about where were you drifting when the Henderson and the oil barge passed you?

A. Just below that tow head there.

Q. Just below the tow head?

A. Yes, sir.

Q. And about where would the east end of your net be lying?

Mr. SNOW: What is the east end of the net?

Mr. ERSKINE WOOD: The Puget Island end of the net.

Mr. SNOW: The Washington side of it.

A. Even with the range lights.

Q. About even with the range lights.

A. Yes, sir.

Q. And the net extended over towards Tenas Illi-
hee Island?

A. Yes, sir.

Q. About how far?

A. 140 or 150 fathoms.

Q. And at which end of the net were you lying at
with your boats?

A. The island end of the net.

Q. The island end of the nets?

A. Yes.

Q. About on the range?

A. Yes.

Q. Which side of you did the Henderson and the
oil barge pass?

A. On the island side.

Q. Which island?

A. Puget island.

Q. Why did they pass on that side of you?

A. Because I wanted them to go on that side.

Q. How did you indicate to them that you wanted
them to go on that side?

A. By showing them a light.

Q. What light?

A. The green light.

Q. And why did you want them to go on that side
of you?

A. So they wouldn't destroy my net.

Q. And about how far away from you did they pass?

A. As close as they could get by.

Q. Did the barge seem to be steering all right to pass you that way?

A. Yes.

Q. Now, after—well, first I will ask you whether or not you had noticed whether the Samson had come into view at the time that the Henderson passed you?

A. No, I didn't notice the Samson, yet.

Q. Then, what course did the oil barge and the Henderson take right after they had passed you?

A. Swinging towards the Oregon shore .

Q. Did they swing easy, or quite a sharp swing, or how was it?

A. Oh gradually.

Q. Gradually across the range?

A. Yes.

Q. Towards the Oregon shore?

A. Yes.

Q. Did you notice whether they swung over that way pretty far or not?

A. They went pretty far over there.

Q. What made you notice that or them so?

A. Why, we was standing there looking at them.

Q. Did you have, or did you not have any idea that they were getting too far over that way?

A. I thought they was getting so far over that they looked to me like they was going on shore.

Q. Do you mean going right up on the shore, or do

you mean getting into shallow water?

A. Well, into shallow water.

Q. Do you know about how long after the Henderson crossed the range towards the Oregon shore that the Samson came into your view? Do you remember anything about that?

A. The Samson came into sight just as the—or I saw the Samson in sight when the oil barge was by me.

Q. When the oil barge was by you?

A. Yes.

Q. When you went across the range?

A. Was by me.

COURT: Do you mean went by you, or was by you?

A. Was by me.

Q. Do you mean very soon after it went by you, or how?

A. Yes.

Q. Did you pay any attention to the whistles?

A. No—well, I heard two or three whistles. I heard whistles. I heard them blow.

Q. Well, do you remember what they were, or not?

A. Yes, I remember that there was a whistle from that—either from the oil barge, or from that Henderson blowed. I don't know exactly which boat was blowing, because I wasn't on shore.

Q. What whistle was it?

A. Blew one whistle.

Q. Did you hear it answered?

A. Yes.

Q. Hear any more whistles?

A. A little while after that, why they blew one more.

Q. What did you hear after that?

A. Well, I don't remember if I heard the answer or not.

Q. Did you hear any danger whistles?

A. Yes, I heard danger whistles.

Q. Did that cause you to look up in that direction, or pay any attention?

A. Yes, we was looking that way all the time.

Q. All the time. Why were you? Why would you be looking up there?

A. Well, after he—because first we was watching that oil barge that was going, gradually going across. It seemed to us he was getting pretty close to the Oregon shore.

Q. Did you hear the crash of the collision?

A. Yes.

Q. Did you see the lights of the boats, or where the boats were at the time of the collision?

A. No, not exactly. Somewheres near it.

Q. Well, just roughly, about where do you think the boats were at the time of the collision? If you could see anything in the night time to give you an idea where they were.

A. They was right out from that bluff there.

Q. Which side of the river?

A. On the Oregon side.

Q. Close in, or not?

A. Pretty close in.

Q. Did you hear any anchor chains going out?

A. I heard anchor chains go right after the crash.

Q. How did it seem to you that these danger whistles were blown? A long or short time or what time before the collision?

A. Oh, it was all at the same time; first the whistles, then the crash, then the anchor, right after it.

Q. Then the anchor, did you say?

A. Last, yes.

Q. Now, what did you do then after the collision?

A. We picked up our net and came up back again.

Q. Did you finish your drift, or not?

A. Yes, we finished our drift.

Q. How far down did that take you?

A. We was just a little below that sand bar there, just above that range of lights.

Q. Have you any idea how far that would be below the point of Puget Island?

A. No, I don't know how far it is.

Q. Can't you just make a guess about it? I don't mean to tie you down. Well, bye and bye I will let you locate that sand bar on the map, and we will show about where you were. Now, after you picked up your net, where did you go?

A. On the tow head.

Q. Back to the tow head?

A. Yes.

Q. Then where did you go?

A. From there over to the Henderson.

Q. And about where was the Henderson lying?

A. Was lying abreast of that Puget Island point, across in the line about Tenas Illihee Island point, down in the river there.

Q. Which side of the river?

A. Oh, on the Oregon side of the river.

Q. Over the point of Tenas Illihee Island?

A. Yes, sir.

Q. And did you notice—where did you go after you left the Henderson?

A. We went up and laid out our net again.

Q. Well, on the way, from the tow head to the Henderson, did you notice the location of two of the stone barges?

A. Yes.

Q. Where were they?

A. They were just out a little—pretty near straight out—a little below the tow head.

Q. Pretty near straight out a little below the tow head?

A. Yes, sir.

Q. Which side of the range were they on?

A. They were on the Oregon side.

Q. Well, about how far over do you think?

A. I don't know how far; a little ways on the other side.

Q. A little ways the other side of the range. Any idea how far?

A. No, I don't know for sure how far.

Q. What made you notice their location?

A. Why, to see if I could—if they was in the road for my drift or not.

Q. You were getting ready to make a new drift, and you wanted to know whether they were in your way?

A. Yes.

Q. Did you make the new drift?

A. Yes.

Q. Tell me how you made it?

A. Well, we had to lay out below the barges.

Q. First, I will ask you, did you decide that these two stone barges were in your way, or not?

A. Yes, they was in our way.

Q. Then, tell me how you made the drift?

A. Well, we laid out half of it, then we waited until we got below, then we finished the rest of it.

Q. Laid out half the net?

A. Something like that.

Q. Which half did you lay out?

A. Why, the Oregon end, the Oregon half.

Q. Until you drifted below the two stone barges?

A. Yes, sir.

Q. Then laid out the rest of the net?

A. The rest of the net.

Q. Where did the rest of the net reach to then?

A. Reached into the range lights.

Q. About on the range lights?

A. Yes.

Q. When you went to look at these two stone barges to locate their position, to see whether they were in the way of your making the drift, how close did you go to them?

A. Pretty close; I don't know exactly in the dark, really how far away we was, but we was pretty close to them.

Q. I don't know just what you mean? Could you touch them?

A. Not when we went by them the first time. When we went by them with the net, then we could touch them.

Q. You could?

A. Yes.

Q. Did you see whether or not they were at anchor?

A. They were at anchor then, yes.

Q. You say that you first saw the Samson after the oil barge and the Henderson was by you?

A. Yes.

Q. Do you mean after they were alongside of you, or after they had passed up above you?

A. After they had passed me.

Q. Now, there is one more thing. I don't know whether you know about it or not. Do you know when the Kern passed down the river?

A. No, I have—I saw the Kern, but when she passed us, I don't know.

Q. Do you have any idea of how far ahead of the Samson the Kern was?

A. No.

Q. You don't know anything about that?

A. No.

Q. Did you locate the position of the other stone barge? The single one?

A. Yes.

Q. Where was it?

A. At the upper end of that sand bar.

Q. At the foot of Puget Island?

A. Yes.

Q. Which side of the range was it?

A. On the island side of the range.

Q. Puget Island side?

A. Yes, Puget Island side of the range.

Mr. C. E. S. WOOD: With the permission of the Court, I will ask a question. Can't you say, Eddie, about how long the Kern had gone by before you saw the Samson's lights?

A. I cannot.

Mr. C. E. S. WOOD: Do you know whether she had got out of your sight, the Kern?

A. I don't know anything about the Kern.

Mr. C. E. S. WOOD: Can't fix that?

A. I don't know anything about that.

Mr. SNOW: I understand you to say that the Kern passed down before the oil barge came up.

A. No, I don't know anything about that Kern at all.

COURT: Are you through with the witness?

Mr. ERSKINE WOOD: No, your Honor, I just

want him to indicate on this chart.

Q. (Mr. ERSKINE WOOD) I don't know whether I asked you how long your net was that night.

A. 160 fathoms.

Q. Now, will you step down here. Do you recognize that as a sketch of the river at that part? Do you recognize the points there? Where is the point of Puget Island there? Do you see how that is?

A. I don't understand that.

Q. This is Puget Island here (indicating). Here is the lower point. Here is meant to be Bugby Hole, and here is Prairie or Clifton Channel, the head of Tenas Illihee Island, the range light, and this is the line of the range, and that is meant to be the sand bar.

A. Which is the sand bar?

Q. This is supposed to be. If that isn't right, you locate it.

Mr. C. E. S. WOOD: This being the lower point of Puget Island, you locate the sand bar yourself, if that isn't right.

A. Yes, that is right.

Q. Show first about where the tow head is. Just take a pencil and make a mark where you think the tow head is, about.

A. Is that the first slough? (indicating)

Q. That is the big slough.

A. Coming around the bend?

Mr. C. E. S. WOOD: Where you live.

A. The slough where that bridge is across, the piling. Right off by this slough is where we had the tow head. It is out from there. It is just abreast of it (indicating).

Mr. C. E. S. WOOD: A little away from there? How would this point do?

A. Yes.

Mr. C. E. S. WOOD: "A". Call this Libellant's Exhibit 4.

Map identified offered in evidence and marked "Libellant's Exhibit 4."

A. Where is that point supposed to be on this map?

Mr. C. E. S. WOOD: Here is your slough where you live. You can mark where you think it is yourself. Here is your slough. There is where you live—on the large slough.

A. Yes, we live at the large slough.

Q. Now, you mark the bluff about where you think it is.

A. Must be about here, if this is the range (indicating).

Mr. C. E. S. WOOD: Point B on Exhibit 4 is the point of the bluff.

A. What is that supposed to be for (indicating)?

Mr. C. E. S. WOOD: That is to show the way the river runs. That is to indicate what is downstream.

Q. Let him indicate about where he lays out his net?

A. (Indicating) From here into the range lights,

but some times we come in here.

COURT: A little louder.

A. Sometimes we come in here, sometimes there and sometimes there (indicating).

Mr. C. E. S. WOOD: Where on this map, this being the point of the bluff, do you commence to drift?

A. Just a little ways below there we start in. You see, the tide is going down, as we are starting here. We get a little further down all the time we go there. Generally we get through just abreast the tow head, somewheres around there.

Mr. C. E. S. WOOD: How far off shore do you start to drift?

A. I don't know.

Mr. C. E. S. WOOD: If he can say about how far off-shore he starts to drift, then he could indicate it on here.

A. I don't know how far out from shore we start in. I couldn't tell.

Mr. C. E. S. WOOD: Now, call this a thousand feet to the inch. That is laid out there from shore—call that distance out there about a thousand feet from shore, about one inch out from shore is about a thousand feet.

Q. (Mr. ERSKINE WOOD) Locate about where you put the east end of your net on the range. You said you put that on the range. Now, locate that first.

A. (Indicating) Right here.

Mr. C. E. S. WOOD: Here is the tow head here.

A. Right across from the tow head. Right about on the ranges here. Sometimes we go maybe just barely by it; sometimes right in it; sometimes might be a little on this side. But the nearest line is we just go on the range line.

Q. So when you finish laying out, the east end of the net is abreast of the tow head?

A. Yes, sir.

Q. Now, where do you start in laying out the west end of your net?

A. (Indicating) This side.

Q. Whereabouts?

A. Well, we start out far enough to reach in there (indicating).

Q. Above the tow head?

A. A little above the tow head.

Mr. C. E. S. WOOD: Did he say what was the length of his net?

Mr. ERSKINE WOOD: He said 160 fathoms.

Mr. C. E. S. WOOD: That is how many feet?

Mr. SNOW: Practically a thousand feet.

Questions by Mr. C. E. S. WOOD:

Now, you indicate the best you can where you start in, in reference to being by this point—where you start in to drift.

A. Where we start in to drift?

Q. Yes.

A. When we are through into there, then we drift on down.

Q. As I understand it, in laying out your net, you

commence to lay on the Oregon side of the range?

A. Yes, sir.

Q. And end up on the range?

A. Yes.

Q. Then about how far from the range do you commence to lay out? How far on the Oregon side of the range do you commence to lay out?

A. About 140 fathoms.

Q. And about how far upstream or downstream, or abreast of the tow head, do you commence to lay out?

A. We start about—we start out from here right between the slough and the tow head, about.

Q. Between this slough called “C”—between that slough and the tow head?

A. Yes.

Q. Between the slough marked “C” and the tow head?

A. We are out here and kind of look across.

Q. Would that be about what you think, right where you would commence something like that (indicating)?

A. I couldn't exactly say down there.

Mr. ERSKINE WOOD: It isn't meant to be exact.

Q. Then we will say that the point marked “D” is about where you commence to drift? I will just assume that. Now, then, you lay it out, and as you lay it out, you drift with the current?

A. Yes, sir.

Q. And end up about opposite the tow head?

A. Yes.

Q. So then, it would be a line, would it, something like this?

A. No.

Q. Into the range light?

A. No.

Q. Why not?

A. This is drifting down all the time while we are putting out our net.

Q. This point I marked "D" is movable, is going down with the current?

A. Yes, moving with the tide.

Mr. ERSKINE WOOD: That would mark the course of their boat.

Q. So the line "DE" is not right, but the point "D" moves downward, and the point "D" is your boat, and moves down with the tide. That is your idea?

A. Yes.

Mr. ERSKINE WOOD: I will ask this: Does the dotted line from D to E mark the course of your boat as you lay out your net? Is that the way your boat drifts as you lay out your net?

A. I don't quite understand what you really mean.

Q. Something like this: You start to lay out at the point "D"?

A. Yes.

Q. And you end up opposite the tow head, on the range at the point "E"?

A. Yes.

Q. Now, you must go from one point to the other on some kind of a line. What line would you say would be right to show the way you pass from "D" over to "E"?

Mr. MINOR: He hasn't said he started at "D" yet. You said you supposed that.

A. It is according to the wind, you know. When it blows hard wind, we move to face more down. If it is calm, we just face our boat just enough to keep up with this buoy we have, so when we get finished laying out, that is straight for our boat.

Q. So the point "D" represents a buoy to which your net is attached?

A. Yes.

Q. And that buoy drifts down the stream?

A. Yes, sir.

Q. And when you finish up at "E" opposite the tow head, the buoy should be just about straight across?

A. Somewhere around there, as close as we can get it.

Q. Then it would be something like the line "FE" would it, something like that line?

A. Something like that when we get through.

Q. When you finish drifting—finish laying out?

A. Finish laying out.

Q. After the net is straightened out, then, on the line "FE" to the range, you then drift on down the river with it, straight out that way, between the buoy and the boat, do you? Drift on further down the

river?

A. Yes, sir.

Q. How far do you go before you end your fishing?

A. We start to haul it up about here, and when we get down here we get it up?

Q. Start to haul it up about "H" and get it up about "G"—is that right?

A. Well, it ought to be moved a little further.

Q. Can't you state by the river. You start to haul it up opposite the sand bar? Is that the idea?

A. The lower end of the sand bar.

Q. And get it up about what time?

A. According to the tide—how fast the tide is going.

Cross Examination.

Questions by Mr. MINOR:

Where were you when you saw the lights of the Henderson and the oil barge?

A. On the tow head.

Q. Now, what did you do after you saw the lights of the Henderson and the oil barge?

A. I was on the tow head there. Didn't do anything.

Q. Didn't do anything?

A. No.

Q. How long did you stay there?

A. I stayed there until my turn came.

Q. Did you stay there until after the Henderson passed?

A. No.

Q. Then where did you go when your turn came?

A. Went out to lay out.

Q. Which way did you go when you went to lay out?

A. Went from the tow head over here.

Q. What direction did you go?

A. Direction?

Q. Yes.

A. The only direction we go, we went over towards the Oregon shore. That is the way we go from there. Ain't got really no rule, exactly.

Q. Do you know where the upper end of Tenas Illihee Island is?

A. Yes, I know where that is.

Q. Did you go in that direction?

A. No.

Q. You go above that?

A. Yes.

Q. How much above that do you go?

A. Quite a long ways above that.

Q. About how far, do you think?

A. I don't know how far.

Q. Do you go as much above as your net is long?

A. Yes.

Q. More than the length of your net above that?

A. As I say, I don't know how long it is.

Q. I know, but I say, more than the length of your net above that, do you?

A. I don't know how far. We go from the tow

head straight over towards the bluff.

Q. Towards the bluff?

A. Yes.

Q. Now, can you mark on that diagram where the Henderson was when you first saw her?

A. Can I walk on it?

Q. Can you mark? Can you mark on that diagram where the Henderson was when you first saw her?

A. I saw her when going down here to the sand bar.

Q. When you were on the tow head, she was at the sand bar?

A. Yes, or somewheres near the sand bar. Might be further. I wouldn't say just exactly abreast of the sand bar, but somewheres around there.

Q. Somewheres around the sand bar?

A. Yes.

Mr. C. E. S. WOOD: He doesn't mean the sand bar.

Mr. MINOR: No; I understand.

Q. Where were you when the Henderson passed you?

A. Just finished laying out my net here, and the Henderson was just a little bit below me.

Q. A little bit below you?

A. Yes.

Q. How far away was the Henderson from you at that time?

A. Just a little ways.

Q. Well, do you think it was as much as the length of your net?

A. No.

Q. One half as much as the length of your net?

A. Just a little ways. As I say, it would be about—as I should think—I don't know for sure, but somewhere about around 100 feet.

Q. 100 feet below you. And she passed between you and Puget Island?

A. Yes, close by the boat.

Q. Now, at that time you must have been very close to the point you mark here as "E", were you?

A. Yes, just a little bit below there. I just finished there and before he got by me, was a little further down.

Q. Then where did she go after she passed you?

A. She was swinging over towards this way.

Q. Swinging over towards the bluff?

A. Yes, towards the Oregon shore.

Q. She didn't swing over at a sharp angle. She swung over gradually, didn't she?

A. Yes, kind of gradually.

Q. Not a sharp angle, but gradually.

A. Just swinging—she didn't go exactly around; just swinging over towards the Oregon shore right along. She was going towards that way. If she was swinging all the time, I wouldn't say for sure, but she was going towards that way.

Q. Did you look at her any more after that?

A. I was looking at her all the time from that time

until the collision happened.

Q. What could you see of her from that time on?

A. Couldn't see nothing of her, but we could see the masts and the boats and the lights.

Q. What lights could you see? See the red light and the green light?

A. We saw them before she passed us.

Q. Could you see them after she passed?

A. I never took no notice of that.

Q. What could you see?

A. We could see the boats.

Q. See the boats themselves?

A. See the boats, yes. The Henderson and that oil tank.

Q. Could actually see the boats themselves; see the hulls, could you?

A. See the outside of them.

Q. Could see the outside of the hulls. Could you see that all the way until the collision took place?

A. I could see the shadow of it in the water.

Q. Was there any light to cause a shadow?

Mr. C. E. S. WOOD: The reflection.

A. The reflection, I mean. We could see the lights on the boats all the time, of course.

Q. What lights could you see on the boats? That is what I asked you.

A. We didn't pay any attention to what kinds of lights it was, but we could see them bright lights, towing lights.

Q. How many of them were there?

A. I didn't pay no regular attention to how many there were.

Q. Were those lights you saw on the Henderson or on the barge?

A. I don't remember.

Q. And you can't say how many lights you saw?

A. No, I didn't count them at all.

Q. Was there any light on the barge at all that you could see after she passed you?

A. That I don't know.

Q. Was there any light on the Henderson you could see after she passed you?

A. I don't know which. If they was on the Henderson or on the barge, I didn't look.

Q. And you can't tell how many lights you saw?

A. No.

Q. But you could see the vessels themselves, could you?

A. I could see them, yes, when they went by me.

Q. But after they went by you, could you still see them?

A. Yes, they was a little ways by, yes.

Q. Could you see them up to the time the collision took place?

A. Could see the mast of the oil barge.

Q. Could see the mast of the oil barge when the collision took place?

A. Just before it took place.

Q. Could you see them at the time the second whistle was sounded?

A. Yes.

Q. See the mast on the oil barge?

A. Yes.

Q. Could you see anything on the Henderson at the time the second whistle was sounded?

A. I don't remember.

Q. But you remember seeing the mast on the oil barge at the time the second whistle was sounded?

A. Yes, sure, we could see that, because that stuck so high up in the air.

Q. And could you see the mast on the oil barge at the time the collision took place, or at the time the crash took place?

A. I did not look just before. I don't remember that because we was standing looking at it.

Q. I thought you testified that the second whistle and the crash came right pretty close together?

A. Yes.

Q. If you heard the second whistle and looked around well, by the time you looked around there, the crash would be on?

A. I say was looking at the boats when the crash came.

Q. You were looking but you can't say whether you could see the mast, or not?

A. I said I could see—I was looking at the boats. We could see the lights, and could see the boat was moving right along.

Q. At the time the crash came?

A. Until the crash came, we could see the boats.

Q. How far do you think they were from you at the time the crash came?

A. That I don't know, either.

Q. As far from you as the length of your drift net?

A. I don't know how far they were from me,—far apart.

Q. You think they were as far from you as the length of your drift net?

A. That is all I know; when the crash came, I was abreast the point here, the point of the island.

Q. Oh, when the crash came, you were at the point of the island?

A. Yes.

Q. So you had drifted down to the point of the island at the time the crash came?

A. Yes.

Q. Then I will mark—were you still on the range lights at that time?

A. Yes.

Q. So, when the crash came, you were here at point "I", were you?

A. I was at the point of the island.

Q. About where I mark this letter "I"? Is that right?

A. Yes.

Q. And at that time you could still see the mast of the oil barge, and see the outline of the boats?

A. Yes, we could even see the Samson coming down further up.

Q. I know, but could you see the outline of these two boats—the Henderson and the oil barge at that time? Is that right?

A. Yes, I could see the boats, yes.

Q. Now, after the crash you drifted on down until you had taken in your nets, did you?

A. Yes.

Q. That is, down about “G,” as you say?

A. Yes.

Q. About how far is it from where you were when you saw—or heard the crash, to the point where you got your nets in?

A. I don’t know how far it is.

Q. How long did it take you to get there?

A. I don’t know.

Q. You don’t know how long it took you to go there?

A. No.

Q. Now, after you took your nets in you went back, did you, to the tow head?

A. Yes, sir.

Q. And how far were you from the tow head at the time that you took in your nets?

A. I don’t know.

Q. Can’t you approximate it, even?

Mr. ERSKINE WOOD: He doesn’t know what approximate means.

Q. Can you guess at it? If you can’t, say you can’t.

COURT: What is your best judgment about how

far?

A. Oh, around a mile.

Q. Around a mile. Your boat is a gasoline boat, is it?

A. Yes.

Q. How long would it take you to go up from—take your gasoline boat to go a mile?

A. That depends on the way I am traveling.

Q. Well, the way you travel when you go back to the tow head.

A. That I don't know. I never did time it at all.

Q. Take you five minutes, you think?

A. Oh, take more than that.

Q. Take you ten minutes?

A. Yes—just according to how fast we go. We don't always go—I don't know how fast we go.

Q. This particular night you speak of, do you think it took you ten minutes to go from the place you got your nets in, to the towhead?

A. I don't know, but the only thing I can tell is just on a rough guess.

Q. Well, what is your best judgment?

A. About 15 minutes.

Q. 15 minutes. Now, how long did you stay at the tow head after you got there?

A. Just a short time.

Q. Then where did you go?

A. Went from there over to the Henderson.

Q. Where was the Henderson at that time?

A. He was on the ground there, laying there still.

Q. Can you mark on this map about where you think the Henderson was?

A. I can somewhere near it.

Q. Well, mark where you think the Henderson was. Take this pencil and mark where you think the Henderson was at that time.

A. She was right opposite the point here, somewhere around; just on a rough guess, I can mark it just as I think.

Q. Well, mark it where you think she was.

A. Oh, just about somewhere around here (indicating on Exhibit 4).

Mr. C. E. S. WOOD: The point "J."

Q. She was below the tow head, was she?

A. Yes.

Q. Did you go straight over from the tow head to where the Henderson lay?

A. Straight?

Q. Yes.

A. Why, we ran out kind of not exactly straight for the Henderson, but kind of towards that direction (indicating).

Q. As straight as you could go?

A. Not exactly as straight as we could go, but you see when we left the tow head there, I saw these rock barges laying in here, so I went by them; just saw where they were.

Q. Where were the rock barges at that time? Can you tell me where they were at that time. Mark on the chart if you can.

A. They lay just a little way outside the range here.

Q. Mark it as nearly as you can.

Mr. C. E. S. WOOD: What does he mean by outside of the range? I would like to have it in the record.

COURT: The Court understands it means outside of where he was when he started.

A. Outside the range; I mean the Oregon side of the range.

Mr. C. E. S. WOOD: You mean the Oregon side of the range.

Q. Mark where the rock barges were when you went to them, as nearly as you can.

A. (Indicating) On the map it don't take very far, but I will do it as near as I think. I don't know; somewhere about there.

Q. We will mark that "K." How many barges were there?

A. Two.

Q. Were they anchored?

A. I didn't look if they was anchored. I don't remember if they was anchored then, or not, when we went over. I don't remember.

Q. Were they the same place when you got back to them?

A. Yes, same place.

Q. Were they anchored when you got back to them?

A. Yes, were anchored then.

Q. Where was the other rock barge?

A. The other rock barge was down here (indicating).

Mr. C. E. S. WOOD: Which side of the range?

Q. Mark where it was on the map.

A. On the Washington side of the range.

Q. Now, mark it, please. Mark it with "L."
(Witness does so.) Was it anchored?

A. She was anchored.

Q. Now, when did you first see that rock barge?

A. When we was drifting—when we—I first saw it when we was going up to lay out, when we saw it there.

Q. You were going up to lay out?

A. Yes.

Q. You mean the first lay out, or the second lay out?

A. No, the second time.

Q. When you came from where you were at the time you took your drift nets in, which way did you go?

A. Straight up towards the sand bar, and from there to the tow head.

Q. Then when you ended up there, did you see that rock barge?

A. When we went up there?

Q. When you went up?

A. I don't remember.

Q. Don't remember seeing it?

A. No.

Q. You passed pretty close to it—where she was, didn't you?

A. Not far away.

Q. You passed—how close do you think you passed to where she was when you did see her?

A. Right—we was drifting by it.

Q. When you went from where drifting to the tow head, you passed right close to it, if in the same place?

A. Yes, pretty close, if she was there, but as I say, I don't recollect there was any barge there when we went up.

Q. Don't remember whether she was there or not?

A. No.

Q. When you came back?

A. When we came back, she was there.

Q. And you drifted, undertook to drift next time?

A. Yes.

Q. You commenced to play out your net, and you had to stop and put the net down below the two rock barges, did you?

A. Yes.

Q. And then you drifted on down, and the other barge wasn't in your way?

A. No, that wasn't in our way. We just went clear of that.

Q. Went clear of that?

A. Yes.

Q. Was that barge at anchor at that time?

A. Was anchored at that time.

Q. Anchored at that time. Did you see those rock barges when the Samson took them away?

A. Yes.

Q. Were they in the same places at that time?

A. Yes.

Q. As they were when you saw them that night?

A. Yes.

Q. So, when the Samson came and took those barges away, they were in exactly the same places where they were anchored that night?

A. Yes, sir.

Q. I understand you live up this slough here, which is above Ostervolt's?

A. Yes.

Mr. C. E. S. WOOD: What is the name of the slough?

A. Algrove or Grove Slough. I don't know which is really it. I have heard them call it both.

Q. Now, you said something about there being some piling at the end of one of these sloughs. Which slough is that?

A. At the second slough.

Q. The slough marked "C," is it?

A. The one just below.

Q. Where is Ostervolt's house?

A. That is right here, just right along—just down the river, just as you go in the slough.

Q. Below the slough, is it?

A. Yes.

Q. Below Grove Slough?

A. Yes.

Q. And where is Ostervolt's seining ground?

A. Right there.

Q. And how far down does it run?

A. (Indicating) It runs down to that where he is working, where he is seining. Right down to that slough that the pilings are, "C."

Q. That piling was an old fish trap?

A. No, that was only drove there, across the slough—droven in the slough there.

Q. Can you tell me where the Samson was when you first saw her lights?

A. I can't tell, but I know she was all in sight.

Q. Where were you when you first saw the Samson's lights?

A. We was just right below the oil barge here. When the oil barge passed us, we looked up that way and saw the Samson.

Q. You saw the Samson's lights as soon as the oil barge passed you?

A. Yes, when we looked up. If she just come in sight, I don't know, but she was in sight then. I didn't pay no real attention.

Q. You couldn't tell me how far she was?

A. No.

Q. How far up the river she was?

A. No.

Q. When you went over to the Henderson, who was on the Henderson?

A. Nobody on the Henderson then.

Q. Everybody been taken off?

A. Yes.

Q. Did you see the Samson go over to the Henderson?

A. No, but I saw the Samson had a search light on the Henderson.

Q. Did you see her go over to the Henderson?

A. No.

Q. Didn't see her go to the Henderson?

A. Not that I can remember; so long ago.

Q. Did you see any boat go from the Samson to the Henderson?

A. No.

Q. Didn't see that either?

A. No.

Q. After the collision, did you see the rock barges of the Samson until you saw them anchored?

A. I saw one on the lower side of the Samson when she showed the search light after the collision.

Q. On the lower side—that means the Washington side.

A. No, down the river.

Mr. C. E. S. WOOD: Her port side?

A. Well, she was really on her—

Mr. MINOR: Starboard side.

A. She had her bow towards this way, laying this way, and the barge was on that side, and her stern was facing kind of towards the island upstream, because when she showed her search light, I could see the rock barge.

Q. What could you see?

A. I say I could see, when she throwed her search light, the other—

Q. You could see the rock on the barge, could you?

A. I could see the Henderson at the same time.

Q. Was there any light on that barge?

A. I don't know.

Q. You didn't see any if there was?

A. No.

Q. When you saw the Samson coming down the river, first, what lights did you see?

A. I saw her tow lights, what we call two bright lights.

Q. Did you see any other lights?

A. I saw a bright light, as I can remember, on the scow.

Q. How many?

A. I saw one.

Q. Only one?

A. Yes.

Q. Did you see any red and green lights?

A. I didn't pay no attention to that at all.

Q. Where were you when the Samson picked up these barges the next morning?

A. Was laying right here on the tow head.

Q. Right on the tow head?

A. Yes, sir.

Q. And you could see her go there and pick them up?

A. She was lying there then when we got back from that second trip.

Q. Will you tell me how far, in your judgment, it is from the tow head to the range of lights? How far do you think it is from the tow head to the range of lights?

A. I don't know how far it is.

Q. Well, is it as far as your net is long?

A. That is—I don't know how far it is.

Q. Do you know whether it is as far as your net is long? In other words, Mr. Grove, if you were to start to put out your nets from the tow head, towards the range lights, would your net come up as far as the range lights, in your judgment?

A. Oh, it would reach the range all right, if it was straight.

Q. It would reach the range?

A. I think, yes.

Q. So you think your tow head was within a thousand feet, that is, you say, within 150 fathoms from the tow head—160 fathoms from the tow head?

A. Well, I don't think it is quite that far, but I say I don't know.

Q. It is within that, you think, less than that?

A. Yes.

Q. And how far did you say your tow head is from shore?

A. Well, you see it is according to where a man counts from. It is according to where he counts from. If he counts from brush, it will be further than if he

counts from beach; it is almost dry to towhead, when real low water, but it is a long beach going in there.

Q. About how far do you think the tow head is from the beach, at the ordinary stage of water?

A. As I said, I think it was about 40 fathoms, but that isn't any longer than that, I don't think.

Q. What whistles did you hear that you called danger whistles?

A. Blowing toot, toot, toot, toot; a whole lot of whistles coming at one time.

Q. Do you know what vessels blew these whistles??

A. No, I said I don't know who blew them.

Q. Now, something was asked you, Mr. Grove, about currents. You say the current sets from the point of the bluff toward the head of Tenas Illihee Island.

A. Yes, heads down toward that way.

Q. And I understand you to say that if the water was—if there was no tide running out, the current would not set down Prairie or Clifton Channel?

A. No tide running out?

Q. If no tide was running out.

A. I really don't remember anything like that at all; low tide.

Q. I didn't say low tide. I said no tide.

A. All I heard was half tide.

Q. At half tide, would any current set down Clifton or Prairie Channel?

A. Not really, from up there. If in kind of little

ways outs from there, it would go kind of down, and after it gets down there, sets down the other way.

Q. After it gets down to the head of Tenas Illihee Island, turns the other way?

A. When it strikes, it gets kind of shallow water, the tide; less towards the channel, deeper the other side.

Mr. C. E. S. WOOD: The Washington shore?

A. The Washington shore.

Q. It goes down toward Tenas Illihee Island, and there the current goes down Clifton Channel?

A. No, goes pretty near straight down.

Q. A pretty large channel, this Prairie Channel?

A. But shallow, you know—no water.

Q. Quite deep; deep enough for boats that travel?

A. In this; very small boats.

Q. Steamers like the Henderson tow up there, don't they?

A. Yes, they can tow.

COURT: By straight down, you mean straight down towards the head of Tenas Illihee Island?

A. Yes, the tide goes straight down towards that way.

Q. How far above the point of Tenas Illihee Island, do you generally start to put out your net?

A. As I said, we put it out over here around right over this way.

Q. Around from the tow head over that way? That means over towards the bluff, does it?

A. Yes, run over towards that old trap over there.

Some old traps over there.

Q. Over towards that old trap.

Mr. ERSKINE WOOD: I want to clear that up.

Q. Now, you said something about showing a light?

Mr. ERSKINE WOOD: I don't understand, and I don't know whether the witness does. I don't know whether you mean that this is the course that the boat runs to reach the point where they commenced to lay out, or that they lay out in that direction. I just want that to be clear.

Q. Mr. Grove, I understand that you showed the Henderson a light when she was coming up to you?

A. Yes.

Q. What light did you show her?

A. Showed her the green light.

Q. Showed her the green light?

A. Yes.

Q. And she passed between you and Puget Island?

A. Yes.

Q. What light did she show? Did she show any light when she passed you?

A. I saw she had lights aboard.

Q. What color lights did she show?

A. I don't remember what. I only saw that she had lights. I didn't look.

Q. You don't remember what lights she showed?

A. I didn't pay any attention to it at all, as long as I thought she went clear of me, that was all I cared.

Redirect Examination.

Questions by Mr. C. E. S. WOOD:

Eddie, when you showed your green light, and the Henderson passed you, as I understood you to say, you were right on the range?

A. Yes.

Q. And after having passing you, she then crossed over the range towards the Oregon shore?

A. Yes.

Q. Who was with you in your boat at that time?

A. Martin Loaland.

Q. Where do you live—on Grove Slough?

A. Yes.

Q. This point marked here "Grove Slough?"

A. Right inside of there.

Q. Now, when you were examined by Mr. Minor, you said at different times that you saw the lights of the oil barge and the Henderson; that you saw their hulls, and that you saw the mast of the oil barge, and then you were asked whether you could see them from—what was that point down here, "G"? Now, I think Mr. Minor asked you when you finished picking up your net; I will say the sand bar. That is about a mile away, I should judge.

A. He said from where we was when the collision took place.

Mr. MINOR: From where you were at the time the collision took place.

Mr. ERSKINE WOOD: He said it was off Puget Island.

Q. Now, I want to understand whether you mean, in answering that, that from that point you could see the lights or the masts or the hull or all of them. Just say what you mean by that. I only want to get it straight in the record.

A. Well, I could see that much that I knew that that was the oil barge and the Henderson; I could sort of see the lights, and I could see that that was a boat. You see I can see the boat further off. I can't tell what boat it is, if not know the boat, but can see it anyway.

Q. You have good eyesight, have you?

A. Oh, I can see before I can tell who it is.

Mr. GUTHRIE: You are very low in the water in rowboats, and the other is high up?

A. Yes.

Q. Did this mast go up so high that it was against the sky?

A. I paid no attention to that, but they was pretty high masts on that. I noticed that when they went by.

Mr. C. E. S. WOOD: I want to ask a question in rebuttal, in order to discharge him, but without precluding ourselves from going into the same question with other witnesses.

Q. Now, suppose the collision—just suppose this—suppose the collision occurred over on the Puget Island side of the range, and somewhere in the general road between the range and the point markd "C" here, the slough, and the Henderson was torn

loose by the collision; from your knowledge of the current, of the river there and the channel, could the Henderson have drifted of herself from that point across to the point "J" where she was found?

A. Not as far as I know. She could never get over there.

Q. Well, why not? What is your reason for not thinking so?

A. Why, she ought to have went down here.

Q. Why?

A. Why, that is the way I always find myself going down.

Q. And your boats are drifting with the current?

A. Yes, that is right.

Q. That is your fishing boats?

A. Yes, that is right; have been doing that for a good many years.

Q. From this point below the—from a point below the point of the bluff, which way does the current set?

A. Point below the bluff?

Q. Yes, starting in from a point below the bluff, or where you say the collision occurred, as you think it did, and as you have said, from that point, or that general neighborhood, which way does the current flow?

A. It goes straight down, the way I think.

Q. Straight down the river?

A. Yes.

Q. Main river?

Mr. ERSKINE WOOD: Take from a point 500

feet, for example, off the bluff.

Q. Well, say a point 500 feet off the bluff, and about opposite the point there, or near somewhere in the general neighborhood of that fish trap. Would your answer still be good, that the current runs straight down the river?

A. Yes.

Q. Now, if the Henderson was torn loose by a collision occurring at a point, say, five or six hundred feet off this bluff, in the general neighborhood of where you say, where would the Henderson be apt to drift?

A. Just where we found them.

Mr. GUTHRIE: Mr. Grove, did you observe the location of the oil barge the next morning?

A. Yes.

Mr. GUTHRIE: Could you fix approximately on the chart about the place where the barge lay. That is, could you point out here where the barge lay the next morning when you saw her?

A. I couldn't say for exact; if I could tell exactly that place on the paper there.

Mr. GUTHRIE: Something like near the place.

Mr. C. E. S. WOOD: Let him state the river and the bank and the point.

A. Right here at the upper end—the lower end of it, would just—right down to that bunch of piling, where had been an old trap; they anchored there right out from where that bluff starts.

Mr. C. E. S. WOOD: How far offshore from the

bluff?

A. Pretty close to shore.

Mr. GUTHRIE: 300 feet?

A. In my judgment, couldn't have been any more, the way I judge, than about 150 feet from the real rocks there, because I was alongside of her with the boat. I was looking at her.

Q. (Mr. C. E. S. WOOD) Could you locate approximately where these fish traps are—that old fish trap?

Mr. ERSKINE WOOD: The old piling?

A. I don't see no piling there.

Mr. GUTHRIE: How near the point of the bluff?

A. She lay right in there where them old pilings are.

Q. (Mr. C. E. S. WOOD): The pilings are there now?

A. Yes.

Q. Mark here. We understand this is rough. Just a general idea about where the pilings would be.

A. Well, I marked the bluff there.

Q. Start from the tow head. Call that tow head correct. Now locate the piling—the old fish trap. Take the range light.

A. Them old pilings would be about here some place.

Q. The old pilings at the point marked "M". Is that right?

A. Yes, where them old pilings lay; I think they are; on that map.

Examination by Mr. Guthrie.

Q. You think the barge lay just outside that old piling the next morning?

A. Yes, I know it lay there, for I was over there to look at it.

Q. Just upstream, or just downstream, or just abreast?

A. The stern was about down there, and it lay downstream. The stern was low down, and the bow starts up.

Q. Located on the map as being just offshore from "M."

A. That is as near as I can tell on this map. It was right out from there, yes.

Mr. GUTHRIE: I mark it "N".

Mr. SNOW: Oil barge was off a point marked "N".

A. Out right there where I put that round mark there.

Mr. C. E. S. WOOD: Well, in the general neighborhood of the point "N".

A. Yes, somewhere like that, somewhere.

Witness excused.

MARTIN LOALAND, a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Loaland, where do you live?

A. Up at 16th and Thurman Street, Portland.

Q. Speak up louder?

A. 16th and Thurman.

Q. What is your business?

A. I work here for the Portland Longshoremen.

Q. Have you been in the fishing business?

A. Yes, was fishing with Eddie Grove this summer—1911.

Q. How long were you in the fishing business?

A. Was fishing from the 1st of May until Christmas.

Q. Was that all the fishing you have done?

A. And was fishing last year in Astoria.

Q. Have you fished any other years?

A. Have been fishing two years.

Q. You fished with Eddie Grove in the summer of 1911?

A. Yes.

Q. All summer?

A. Yes, sir.

Q. Where did you fish? What part of the river?

A. In Puget Island—in the channel outside of Puget Island.

Q. Is that right, on the channel outside of Puget Island?

A. Yes, between Oregon shore and Puget Island.

Q. Were you in the boat with Eddie Grove on the night of this collision?

A. Yes, sir.

Q. Have you heard Grove's testimony here in the

courtroom? You heard what he said?

A. Yes, sir.

Q. Well, I think I will just ask you to go on and tell what happened that night from the time you were lying at the tow head. Tell what you saw and what you did.

A. Well, we saw this—

COURT: Speak up, so every one can hear you.

A. We were lying there; well, when we left the tow head, we went out to lay our net, and just as we finished laying out, the Henderson passed us; just as we finished laying out the net.

Q. Where were you then?

A. Was just a little below the tow head when she passed us.

Q. And which side of the range were you on?

A. We was laying just a little inside the range, about a couple of fathoms or so inside the range.

Q. What do you mean by inside?

A. On the Puget Island side.

Q. About a couple of fathoms inside the range?

A. Something like that; a little bit inside.

Q. Then the Henderson passed you?

A. Yes.

Q. How close?

A. Pretty close.

Q. Then what did she do?

A. After they passed us, she headed on the Oregon shore; crossed over on the Oregon side.

Q. How much of a shear did she make?

A. Kind of just slanted out a little bit; pretty far over towards the Oregon shore.

Q. Pretty far over towards the Oregon shore?

A. Yes, sir.

Q. Did you watch her at all?

A. Yes, was looking at her.

Q. Why were you watching her?

A. Sir?

Q. Did you have any reason to watch her?

A. No; well, we see—we thought she was going too far over to the other side.

Q. Too far over to the Oregon side?

A. Yes, we thought was going getting pretty far over.

Q. On account of the shallow water over there?

A. Yes.

Q. Then did you see the Samson?

A. Yes, see something; just a little after the Henderson passed us, just a little after.

Q. Then what did you see in relation to the two boats? Did you see their course, or notice how they went?

A. No, I didn't pay no attention to it; just looked over.

Q. Did you hear any whistles?

A. Yes.

Q. Do you remember them?

A. Yes, pretty good.

Q. What did you hear?

A. I hear first blow one whistle from the Hen-

derson, or the oil barge—I don't know which.

Q. Then what other whistles did you hear?

A. A short time after blow one signal more.

Q. What boat?

A. Same boat; same whistle.

Q. Did you hear the Samson answer either of these whistles?

A. Well, I heard her answer the first whistle, but I don't know whether answered the last whistle or not.

Q. Did you hear any other whistles?

A. Heard a danger whistle just a short time after the second whistle.

Q. And how soon before the collision?

A. Just a few seconds.

Q. Did you hear the collision?

A. Yes, sir.

Q. You heard the boats come together?

A. Yes, sir.

Q. Did you hear anything more?

A. I heard a big noise.

Q. A big noise?

A. Yes.

Q. Did you hear the anchor chains?

A. Yes, sir; Eddie says—

Q. Then what happened? What did Eddie say?

A. I asked Eddie what that noise is. He said account of anchor chains go out.

Q. And how soon was that after the collision?

A. Just the same time.

Q. You say that the danger whistles and the collision and the anchor chains were all very close together?

A. Yes, sir.

Q. Did you finish your drift?

A. Yes, sir.

Q. Then what did you do?

A. We picked up our net and went back to the tow head.

Q. And then what?

A. We went over and took a look at the Henderson.

Q. And where was she?

A. Pretty near down to Tenas Illihee Island.

Q. Pretty near down to Tenas Illihee Island?

A. Way the other side there. I couldn't say exactly where, but over on the other side.

Q. Was it up above the point, or down below the point, or abreast the point of Tenas Illihee?

A. A little bit above the point, I guess.

Q. Then where did you go?

A. We went up a little while after to lay out our net again.

Q. Went up to lay out your net again?

A. Yes.

Q. Did you notice the stone barges?

A. Yes, sir.

Q. Did you notice where they were lying?

A. Yes, sir.

Q. Where were they lying?

A. Was lying on the Oregon shore; on the Oregon side of the range.

Q. About how far on the Oregon side of the range?

A. How far from the range?

Q. How far were these two stone barges on the Oregon side of the range?

A. Something like 50 fathoms from the range.

Q. How much?

A. 50 fathoms from the range.

Q. And state why you looked at them. Why did you look at these stone barges?

A. Well, you see we was going to lay our net, and we see it was in our road to drift. We see that it was in our road, and we couldn't lay out our nets.

Q. I can't understand you. Can't you speak up loud? You can hear me, can't you?

A. Yes, sir.

Q. Well, you talk back to me.

Mr. C. E. S. WOOD: And don't talk quite so fast.
(Answer read.)

Q. How did you lay out your net?

A. We lay out half of it into the stone barges. We started in to lay it all, and we met the stone barges, and we had to stop and we drifted below the stone barges; then we finished our laying out.

Q. Laid out the other half of it below the stone barges?

A. Yes, sir.

Q. Where did the Puget Island end of your net

reach then after you laid it out below the stone barges?

A. Into the range.

Q. About on the range?

A. Yes.

Q. Did you notice where the oil barge was anchored the next morning?

A. Yes, sir.

Q. Where was it?

A. Just a little below that point.

Q. What?

A. Below that point, I believe.

Q. A little bit below the bluff?

A. Yes, sir.

Q. How far?

A. Well I couldn't tell exactly how far from shore.

Q. Did you notice the other stone barge, or the one that was off alone?

A. Yes, sir.

Q. Where was it?

A. It was laying below Puget Island.

Q. Below Puget Island?

A. Yes, down to the sand bar.

Q. Down near the sand bar?

A. Yes, sir.

Q. Which side of the range?

A. The Washington side.

Q. How?

A. On the Washington side.

Q. How far on the Washington side of the range?

A. Not very far, though.

Q. Can you make a guess how far, just a guess?

A. No, not very well.

Q. What? Well, if you don't know, never mind. When you laid out your net, as Eddie Grove has testified here today, up below the bluff, how does she drift?

A. Straight down the river.

Q. Straight down the river?

A. Yes.

Q. Is there any suction to carry her down Clifton Channel?

A. No.

Q. If you turn something adrift off of that bluff, four or five hundred feet, where does it drift on a half tide, half ebb tide?

A. Well, I couldn't tell you that.

Q. If the collision was over on the Puget Island side of the river, near the little slough where the piling is across, if the collision was in close to that, and the Henderson was wrecked there, do you think she could have drifted across the current to the place where you found her on the point of Tenas Illihee Island?

A. No, could never do it.

Q. Why not?

A. The tide goes along Teñas Illihee Island.

COURT: The tide or the current?

A. The current goes right down.

Cross Examination.

Questions by Mr. MINOR:

What time was it when you left the tow head to put out the drift?

A. Well, I couldn't say the time exactly. It was round one o'clock we left the tow head, or something like that.

Q. One o'clock?

A. Something like that. I am not sure, though.

Q. Did you see the Henderson before you left there?

A. Yes, sir.

Q. Where was she?

A. Coming up the river.

Q. Coming up the river?

A. Yes, sir.

Q. How far down the river was she?

A. We see her when below the sand bar.

Q. Below the sand bar?

A. We see her coming up the river.

Q. And below the sand bar?

A. Yes.

Q. Now, you left the tow head, and which way did you go?

A. We went over to the Oregon shore, the Oregon side.

Q. Did you go clear across?

A. Yes, we went right across.

Q. Did you go clear across?

A. Clear across, yes.

Q. Clear across the river?

A. Yes.

Q. Clear to the Oregon shore?

A. No, not close to the shore. We went out, let's see, 160 fathoms outside from the range.

Q. How far were you from the Oregon shore?

A. Well, I don't know how far from shore.

Q. Can't you estimate it?

A. No, I couldn't tell how far it is.

Q. Were you as far from the shore as you were from the range lights? Were you as far from the Oregon shore as you were from the range lights—the ranges?

A. I guess we were further from the ranges.

Q. Further from the ranges than you were from the Oregon shore?

A. I guess so.

Q. And you were 160 fathoms from the ranges?

A. Between 160 and 150—something.

Q. Where were you—what were you opposite on the Oregon shore, above or below the bluff?

A. Below the bluff.

Q. Below the bluff?

A. Yes, sir.

Q. How far were you below the bluff?

A. I couldn't tell you.

Q. How far were you from the point of Tenas Illihee Island when you were putting out your nets?

A. I don't know how far.

Q. Were you as far from the bluff as you were from the point of Tenas Illihee Island?

A. We were further from the point of Tenas Illihee Island.

Q. Further from the point of Tenas Illihee Island?

A. Yes, sir.

Q. Can you say how much further?

A. No.

Q. Were you above or opposite the point of Tenas Illihee Island?

A. Was above the point.

Q. Above that point. Were you above the point where the Henderson was when you went over to her after she sunk?

A. Yes.

Q. Above that?

A. Yes, above that point.

Q. How much above that point?

A. Well, I couldn't tell you in length at all. I was only down there one summer. I don't know the length down there at all.

Q. How long did it take you to put out your net?

A. Oh, sometimes six or seven minutes.

Q. Six or seven minutes?

A. Something like that.

Q. And how far down does your net drift before you take it in?

A. We start in to pick up below the sand bar.

Q. Below the sand bar?

A. Yes.

Q. How far below the sand bar?

A. We just start in; we get below the sand bar and start in to pick it up.

Q. How far do you drift from the time you put it out until you begin to take it up?

A. How far?

Q. How far do you drift from the time you get it out until the time you commence to pick it up?

A. Well, I don't know how far when we finish laying it down.

Q. How long a time elapses from the time you put out your net, until the time you begin taking it up?

A. Half an hour.

Q. Half an hour?

A. In a strong current. If slack water, take longer time.

Q. Well, a night like July 22nd, how long was it between the time you put out your net, and the time you began to take it up?

A. Be somewhere around half an hour.

Q. Half an hour?

A. Thirty-five minutes, or something.

Q. And how long does it take you to get the net in after you begin to take it in?

A. Well, that all depends on how much fish we get.

Q. Well, that night, how long did it take? The first drift that night, after the Henderson passed you?

A. If not much fish, can take it up in ten minutes.

Q. That night you took it up in ten minutes, you think ?

A. I am not sure ; about, something like.

Q. What is your best recollection of how long it took you to take up the net that time?

A. Ten or fifteen minutes, I guess, something like that.

Q. Ten or fifteen minutes?

A. Yes.

Q. How far would you drift in that ten or fifteen minutes?

A. I don't know how far we drift in that time.

Q. Had you taken up your net at the time that you heard the first whistle from the Henderson?

A. No, we was lying on the drift then.

Q. What is that?

A. We was lying on the drift then.

Q. You were drifting then?

A. Yes.

Q. How far down had you drifted at that time?

A. Oh, below the island.

Q. You were below the island, were you?

A. Below the point of Puget Island.

Q. Below the point of Puget Island?

A. Or around the point of Puget Island.

Q. And your boat, then, was on the ranges, was it?

A. Yes.

Q. And you were about the point, or just below the point of Puget Island?

A. That is when the collision came.

Q. How far were the boats from you at that time?

A. Which boat?

Q. The Henderson and the oil barge.

A. When he passed us?

Q. How far were they from you at the time that you begun to take up your net?

A. Well, they was right up on the bluff.

Q. Well, how far were they from you?

A. Oh, a couple of miles.

Q. Could you see them?

A. No, I couldn't see them when we was standing up; see them when we come back again.

Q. Couldn't see the boats at all?

A. Not when we stand and pick up the nets we couldn't see them then.

Q. Could you see the Henderson when you heard the second whistle?

A. Yes, sir.

Q. How long was the second whistle before the collision?

A. The second whistle? Just a few seconds.

Q. You say you could see the Henderson at that time?

A. Well, could see the shadow. Just see the dark, couldn't see the top—could see the shadow, could see the lights and the shadow of the boats.

Q. By shadow, do you mean the reflection of the lights in the water?

A. Yes, could see the lights in the boats.

Q. What lights could you see?

A. Well, could see the bright lights.

Q. See the bright lights?

A. Yes, sir.

Q. And you think you were two miles away at that time?

A. No, not at that time; but after we picked up we was. When the collision came, we was then, I guess, about a mile away.

Q. What is that?

A. When the collision came, I guess we was about a mile away from them.

Q. A mile away?

A. Something like that.

Q. Now, after you picked up your nets, what did you do?

A. After we picked up?

Q. After you picked up, what did you do?

A. Went back again to the tow head.

Q. Well, how far were you from the tow head when you finished picking up your nets?

A. Well, I don't know how far it is down there.

Q. How far do you think you were?

A. Well, I couldn't make no guess at all, because I don't know.

Q. How long did it take you to get from there to the tow head?

A. I guess it took about half an hour, something.

Q. Half an hour. When you went up there to the tow head, did you see any rock barges?

A. Yes, sir.

Q. Which one?

A. Saw the two laying over in the road.

Q. When you went from that point to the tow head, you saw these two?

A. Yes, sir.

Q. Did you see the one lying by itself?

A. One was drifting down.

Q. What is that?

A. The single one was drifting down when we came up.

Q. That was still drifting when you came up?

A. Yes.

Q. Where was it when you came up?

A. I guess about from the sand bar—above the sand bar.

Q. Was about opposite the sand bar when you came up?

A. Yes.

Q. Was not anchored at that time?

A. I don't think was anchored at that time.

Q. Which side of that one did you pass on coming up?

A. On the Washington side.

Q. On the Washington side. Grove said he didn't see that barge when he came up. You did, did you?

A. Yes, I guess I seen the barge.

Q. What?

A. I guess I remember seeing the barge when we came up.

Q. He says he didn't see it when you were coming up, but you did see it?

A. I guess I saw it that time all right.

Q. And at that time it was still drifting?

A. Yes, sir.

Q. Now, did you see the other two barges when you came up?

A. Yes.

Q. How far did you pass from those?

A. Well, you see just following—we was just following Puget Island shore when we came up.

Q. What is that?

A. We was following Puget Island shore when we came up.

Q. Following Puget Island shore?

A. Yes.

Q. How far were you from the shore as you came up?

A. Well, something like 50 fathoms, I guess.

Q. What?

A. I am not sure. Just a few fathoms from shore.

Q. How many fathoms do you think?

A. I couldn't tell you how many fathoms from shore that is.

Q. How close did you pass to the two rock barges when you came up?

A. How close we passed them?

Q. What is that?

A. I don't know how close we passed them. You see we was following the shore up, and the barges

were lying outside the range.

Q. Now, were they anchored at that time?

A. Yes, sir.

Q. How do you know they were at anchor?

A. I am not sure they were anchored then, but we went to the Henderson and back again, and then they were anchored.

Q. Were they anchored above or below the tow head?

A. I think right abreast the tow head.

Q. How far were they anchored from the tow head?

A. Well, I couldn't tell you.

Q. Couldn't you approximate that?

A. No, I don't know the measures, I don't know how far down.

Q. What did you do after you got to the tow head?

A. After we left the tow head? Went over to the Henderson.

Q. Could you see the Henderson then from the tow head?

A. We could see the Samson was laying over there and went over and found that.

Q. I didn't hear.

A. We went over and found that.

Q. I say, could you see the Henderson from the tow head when you got to the tow head?

A. No, couldn't see that.

Q. Then how did you know where to go?

A. You see the Samson, he was laying over there.

Q. The Samson was over there?

A. The Samson was laying over there too.

Q. At that time?

A. When we went over there.

Q. And you could see the lights on the Samson?

A. Yes, sir.

Q. In going across did you go near these two rock barges?

A. What?

Q. In going across to the Henderson, did you go near to these two rock barges?

A. No, went below them.

Q. Went below them?

A. Yes.

Q. And did you go as nearly in a line as you could from the tow head to the Henderson?

A. Well, we was running all around there.

Q. I say, did you go as nearly as you could in the line? You aimed to go in a straight line, didn't you?

A. No, wasn't any straight line. We went around and looked for the Henderson and found her.

Q. I thought you said the Samson was by her.

A. You see the Samson was a little above.

Q. And you went over to the Henderson, and went a little below these two rock barges?

A. Yes, sir.

Q. Now, when you put out your nets the next time, I understood you to say you had to go pretty close to these two rock barges?

A. Yes, sir.

Q. And that you had to put out about half your net—

A. Yes, sir, put out half the net.

Q. Half the net after you passed her.

A. Before we passed her.

Q. You put out half?

A. Yes.

Q. Then you put out half after you passed her?

A. Yes.

Q. And they were at anchor at that time, were they?

A. Yes, was at anchor.

Q. Did you see them taken away the next morning by the Samson?

A. Yes.

Q. Were they anchored at the same place?

A. Yes.

Q. The same place as that night, the next morning when the Samson picked them up?

A. Yes, sir.

Q. After you had passed these two barges, putting out your net on that occasion, you drifted on down to the sand bar, did you?

A. Yes, sir.

Q. And did you see the other barge at that time?

A. Yes, sir.

Q. And was it in your way?

A. No.

Q. It was not in your way?

A. No, we passed her.

Q. You passed her. Was she anchored then?

A. Sir?

Q. Was she anchored then?

A. Was she anchored then?

Q. Was she anchored at that time, at the same place as she was when picked up by the Samson the next morning?

A. Sir?

Q. Was she anchored at that time at the same place where she was when the Samson picked her up the next morning?

A. Yes, sir.

Q. Did you see the oil barge that night?

A. Yes, sir.

Q. What did you see about her that night? You didn't go to her that night, did you?

A. No, we could see the dark shadow where the oil barge was laying up there.

Q. You say the Samson was laying not far from the Henderson when you went over there?

A. A little above the Henderson.

Q. How far was she from the Henderson?

A. That I couldn't tell.

Q. Was anybody on the Henderson at that time?

A. The Henderson was sunk when we got over there.

Q. Was anybody on the Henderson, at that time?

A. No, was nobody.

Q. You didn't take off any people that were on it?

A. No.

Q. Did you testify before the Inspectors?

A. Sir?

Q. Did you testify before the Inspectors—the Inspectors of Hulls and Boilers? Did you testify before them?

A. I don't know what you mean.

Q. Did you ever testify in this case before?

A. No.

Mr. MINOR: I haven't all the testimony, I will say, your Honor, so I didn't know.

Mr. ERSKINE WOOD: I will say none of these fishermen did.

Q. When did you first learn you were to be a witness in this case?

A. I don't understand what you mean.

Q. When did some one first approach you to testify in this case?

A. This fall.

Q. What time this fall?

A. Not very long ago; a few days ago.

Q. Who was it?

A. Ole Grove.

Q. Who?

A. Ole Grove.

Q. And he was the first to come to you?

A. He was the first that told me about this—I was in the case.

Q. And with whom have you talked about the case before you testified?

A. I don't know exactly how you mean.

Q. With whom have you talked about this case before you went on the stand?

A. First I was talking with Ole Grove, and then Mr. Shaver came up to my house.

Q. So you talked with Mr. Grove and Mr. Shaver?

A. Not at the same time. Mr. Shaver was up a few days afterward and told me to come down here.

Q. Was that Grove the same man who testified awhile ago?

A. Sir?

Q. Is that the same man who testified awhile ago—Grove?

A. I give name and address.

Q. Is the man who talked to you the same man who was on the stand before—who went on the stand?

COURT: The Grove you talked to you is your partner who fished with you?

Q. The man who talked to you was he the same man who fished with you?

A. No, was fishing with Eddie Grove.

Q. And the other man, who is he?

A. Ole Grove.

Q. Who is he?

A. He is sitting there—the old man with the dark moustache.

Q. The father of Eddie Grove?

A. Yes, sir.

Q. Can you state where the Samson was when you first saw her?

A. Yes, was in Bugby Hole.

Q. She was in Bugby Hole?

A. Yes.

Q. Could you see her lights?

A. Yes, I could see his lights.

Q. What lights could you see?

A. Only bright lights.

Q. The only light you could remember seeing was the bright lights?

A. Bright lights.

Q. Did you see the red light or the green light on her?

A. Well, could see—I didn't pay no attention to it.

Q. You don't remember seeing the red light or the green light on them at all?

A. Well, could see them, but I didn't pay no attention to them.

Q. I say you don't remember seeing them?

A. No.

Q. Do you remember whether you did see them, or not?

A. I don't remember seeing any lights at all.

COURT: I can't hear you. Do you recollect whether you saw any colored lights at all?

A. I don't remember seeing colored lights.

(Witness excused.)

ELIAS DAHL, a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Dahl, where do you live?

A. Skamokawa.

Q. Skamakowa?

A. Yes.

Q. What is your business?

A. Fishing.

Q. How long have you been in that business?

A. About three years.

Q. What kind of fishing do you do?

A. Gill net fishing.

Q. That is drifting?

A. Yes.

Q. Where do you do it?

A. In the river.

Q. I know; what part?

A. Oh, out from Skamokawa.

Q. Where were you fishing the night of the collision between the Henderson and the Samson?

A. Up on Puget Island.

Q. Who were you fishing with?

A. Ole Grove.

Q. What kind of a boat did you have?

A. Gasoline boat.

Q. Just the two of you in it?

A. Yes, sir.

Q. Do you know how many fathoms of net you were using?

A. Oh, between 150 and 155, I guess.

Q. Between 150 and 155?

A. Something like that.

Q. Where were you lying at the time you saw the Henderson coming up the river?

A. On the tow head.

Q. On the tow head?

A. Yes.

Q. Where were you when the Henderson passed you coming up the river?

A. On the tow head.

Q. Still on the tow head. Wasn't your turn to go out?

A. No.

Q. What were you doing there at the tow head?

A. Nothing.

Q. Did you see the Samson come around the bend in Bugby Hole?

A. Yes.

Q. Did you notice the course of the Henderson and the oil barge at all?

A. Yes.

Q. What was it?

A. It was hauling over to the Oregon shore.

Q. Did you hear the whistles given that night?

A. Yes.

Q. Do you know what they were?

A. Yes.

Q. What were they?

A. The Henderson blew one whistle first time.

COURT: What was that answer?

A. The Henderson blew one whistle.

Q. Was it answered or not?

A. Yes.

Q. What other whistle was blown?

A. It was blown—the Henderson blew another whistle a little afterwards.

Q. Do you know whether that was anchored?

A. I don't know. I don't think so.

Q. Did you hear any other whistles?

A. Yes.

Q. What were they?

A. I don't know what you call them—danger whistles or something.

Q. How long was that before the collision?

A. Just a few seconds.

Q. Did you hear the crash of the collision?

A. Yes.

Q. Did you hear the anchor chains that have been spoken of?

A. Yes.

Q. How long after the crash of the collision did the anchor chains go out?

A. I don't know. All together. All at once. The whistles and the crash and the anchor chains, all together.

Q. How do you lay out your net there to drift?

A. Well, we go from the tow head to get close to the Oregon shore. Then we started from the Oregon shore that night, and lay over to the range lights, towards the Washington side.

Q. You start over towards the Oregon shore?

A. Yes.

Q. And lay your net over until the other end reaches the range lights?

A. Yes.

Q. Why don't you lay across the range lights onto the Puget Island side?

A. Well, you get snagged.

Q. Where are the snags?

A. Down below the sand bar.

Q. What is the course of your drift from the point you lay out until you pick up? I just want you to tell me about how your net drifts after you lay it out?

A. Oh, it drifts straight down the river.

Q. Does it ever suck over into Clifton Channel?

A. No.

Q. Did you see the Daniel Kern that night, or do you remember it?

A. I am quite sure, I guess I did.

Q. You don't know. Did you see the stone barges after they were loose from the Samson?

A. Yes.

Q. Which ones did you see?

A. I saw them two together.

Q. Did you see the other one?

A. No.

Q. Didn't notice the other one. Did you notice the location of those two together?

A. Yes.

Q. Describe it. Tell me where it was.

A. Well, it was laying loose about out from the tow head, just a little below the tow head, the Ore-

gon side of the range lights.

Q. How much the Oregon side of the range lights?

A. I couldn't tell for sure.

Q. Can you make a guess?

A. About 50 fathoms, I guess.

Q. Why did you notice that?

A. I noticed when I came back from the Henderson.

Q. When did you go over to the Henderson?

A. Just after they struck.

Q. Did you take any people off the Henderson?

A. No.

Q. Where was the Henderson when you went to her?

A. Well, she was back from the bluff—a little below the bluff there.

Q. A little below the bluff?

A. Yes.

Q. Was anybody on the Henderson when you got there?

A. Yes.

Q. How long after the collision do you think you got there?

A. Oh, about four or five minutes.

Q. You ran from the tow head straight to the Henderson?

A. Yes.

Q. Did you drift after that any?

A. No.

Q. What fishermen took the crew off the Henderson?

A. I couldn't tell.

COURT: Did you say you couldn't tell?

A. Yes.

Q. Did you notice where the Henderson was lying when she was in the shallow water aground? The next morning, I mean?

A. Yes.

Q. Where was she?

A. She was laying abreast of Tenas Illihee Island point. The Washington side of Tenas Illihee Island.

Q. On what?

A. The Washington side of Tenas Illihee Island.

Q. The Washington side of Tenas Illihee Island?

A. Yes.

Q. How far off the point of Tenas Illihee Island—Was she out as far as the range?

A. No.

Q. Between the range and Tenas Illihee Island?

A. Yes.

Q. Well, I would just like to know about how much between the range she was?

A. I couldn't tell.

Q. If the collision occurred over on Puget Island side somewhere near or opposite that little slough that has the piling across, do you think it would be possible, under the conditions that night, for the Henderson to drift from that point of the collision over to where she was the next morning?

A. No.

Q. Why wouldn't it?

A. Because the current don't go over there.

Q. Did you see the boats when they came together? Did you see the boats when the collision happened?

A. Well, I didn't see the boats. I saw the shadow of the boats and the lights.

Q. That is what I mean. You could see where the boats were?

A. Yes.

Q. Where do you think they were?

A. Well, they was just a little below some trap pilings, pretty near on the point there.

Q. Close to the point?

A. Pretty close to the point.

Q. We have been speaking about several points here. Which point do you mean?

A. The point below the bluff.

Q. On the Oregon side?

A. Yes.

Q. If the collision occurred at that place, and the Henderson drifted from the point of the collision, in your opinion, where would she drift to?

A. Down the river.

Q. How?

A. Down the river.

Q. And where would she land, in your opinion?

A. She would land where she struck the bottom.

Q. I mean, would it be likely that she would land

where you saw her the next morning, or not?

A. Yes.

Cross Examination.

Questions by Mr. MINOR:

Were you a witness before the Inspectors?

A. No.

Q. When were you first approached to be a witness in this case? When did somebody first come to you, and ask you to be a witness in this case?

A. Last December.

Q. Who came?

A. I couldn't tell exactly, but I believe Shaver.

Q. Who?

A. Shaver.

Q. Whom have you talked to about this case?

A. Mr. Shaver.

Q. Anybody else?

A. Well, I don't know. I don't think so.

Q. Didn't talk to Ole Grove?

A. I don't think so.

Q. I wish you would tell me about how far this tow head is from the land.

A. I couldn't tell exactly.

Q. Well, as near as you can?

A. Oh, about ten or fifteen fathoms from low water mark.

Q. About how much?

A. Ten or fifteen fathoms from low water mark.

Q. Ten or fifteen fathoms from low water mark, and how much from ordinary water mark?

A. I don't know. I couldn't tell.

Q. How much from high water mark, then?

A. I couldn't tell that, either.

Mr. MINOR: I don't know what the maps are made on, your Honor, is the reason I ask these questions. I don't know whether these charts are based on low water mark or high water mark.

Q. How far is the tow head from the range lights—I don't mean from the lights but from the ranges?

A. I couldn't tell.

Q. Could you tell approximately?

A. I don't think so.

Q. Couldn't tell anywhere near how far it is?

A. No.

Q. How far are the range lights from Tenas Illihee Island?

A. I couldn't tell.

Q. Could you tell that approximately?

A. No.

Q. How far are the range lights, in your judgment, from Puget Island?

A. Well, I never measured.

Q. Could you tell that approximately?

A. I don't think so.

Q. Where was the Henderson when you first saw her?

A. Down the river.

Q. How far down?

A. A little up above Skamokawa.

Q. A little above Skamokawa?

A. Yes.

Q. How far is Skamokawa from your tow head?

A. I couldn't tell.

Q. Not approximately even?

A. No.

Q. Is it as much as four miles, do you think?

A. I don't know.

Q. As much as three miles, do you think?

A. I couldn't tell.

Q. Did you ever run that distance in a gasoline boat?

A. Yes.

Q. How long a time does it take to run that distance in a gasoline boat?

A. I don't know. I never looked with a watch.

Q. Never looked to see?

A. No.

Q. Now, when you saw the Henderson, had you seen the Samson?

A. No.

Q. Where was the Henderson when you first saw the Samson?

A. Was just about abreast from the lower end of the island.

Q. When you first saw the Samson, she was about abreast of the lower end of the island.

A. Yes.

Q. That means from the lower end of Puget Island, does it?

A. Yes.

Q. Not from the sand bar?

A. No.

Q. There is a little island below that?

A. Yes.

Q. You mean from the main island?

A. Yes.

Q. Just about opposite that point; and where was the Samson?

A. Well, he just came around the bend, up the river.

Q. You could see the Samson from the tow head could you?

A. You could see the light over the woods.

Q. You could see it over the woods?

A. Yes, the head lights.

Q. Head lights over the woods. What kind of light was it?

A. Bright light.

Q. Could you see the red and green lights?

A. Not then.

Q. Couldn't see the red and green lights then at all?

A. No.

Q. Did you see the red and green lights afterwards?

A. Yes, sir.

Q. Where was the Henderson when you saw the red and green lights of the Samson?

A. I didn't see both lights. I saw the red, not the green.

Q. You saw the red one and not the green one?

A. Yes, sir.

Q. So you didn't see any green light on the Samson at all?

A. No.

Q. But saw only the red light? Now, where was the Samson when you saw the red light? Where was the Samson when you saw the red light?

Mr. C. E. S. WOOD: Samson?

A. Just when came around the bend.

Q. Just coming round the bend of Puget Island?

A. Yes.

Q. And at that time you could only see her red light?

A. I think so.

Q. Now, did you watch the Samson from that time?

A. Not all the time.

Q. Did you watch her at all?

A. Well, some of the time.

Q. Did you see her green light at all?

A. I couldn't remember.

Q. You saw her red light all the time, did you?

A. No.

Q. You didn't see her red light all the time?

A. I don't think so.

Q. Did you see her red light most of the time?

A. I don't know. I didn't watch her all the time.

Q. Did you see the Samson about the time the collision took place?

A. Yes.

Q. I understand that you heard the whistle from the Henderson?

A. Yes.

Q. And did you hear that answered by the Samson?

A. I think so.

Q. The first whistle?

A. The first whistle.

Q. Did you see the red light of the Samson at that time?

A. No.

Q. Did you see any light on her at that time?

A. I see a bright light.

Q. Only the bright light.

A. Yes.

Q. Didn't see either the red or green light?

A. I don't remember.

Q. Now, the Henderson gave a second signal did she?

A. I think so.

Q. Are you sure that you heard that signal?

A. I believe I did.

Q. Are you sure of that?

A. I don't remember now. I think so.

Q. You are not sure of that, though. You are not as sure of that as you are that you heard the first one, are you?

A. Yes, I think I am.

Q. You think you are sure that you heard two sig-

nals from her? Now, did the Samson answer the second one?

A. I don't know. I couldn't tell.

Q. Now, at that time could you see the Samson?

A. See the light on her.

Q. What light could you see then?

A. I could see the bright.

Q. See the bright light? Could you see the red light?

A. No.

Q. Couldn't see the red light then at all?

A. I don't think so.

Q. But as far as you recall, you don't remember seeing any green light on the Samson that night?

A. I don't know. I can't remember.

Q. When you saw the Henderson, what light did you see on her? When you first saw her?

A. Well, when I first see her is bright light.

Q. Did you see any other lights on the Henderson?

A. I don't know. I can't remember.

Q. You don't remember seeing either the red or the green light on the Henderson?

A. No.

Q. Did you see any lights on the barge—the oil barge?

A. I don't know; I cannot remember.

Q. Did you see any lights on the Henderson at the time of the collision?

A. I saw some bright lights.

Q. On the Henderson. Did you see any bright lights on the barge at that time?

A. I couldn't remember.

Q. And at that time you saw bright lights on the Samson?

A. Yes.

Q. How many?

A. Well I couldn't remember. I see the bright top light.

Q. The bright top light?

A. Yes.

Q. You don't remember how many top lights?

A. I guess she got three.

Q. Three. Did you see all three?

A. I think so.

Q. And how many did the Henderson have?

A. I guess she have two.

Q. Two. Did you see those?

A. Yes, I think so.

Q. I understood you to say that the second whistle from the Henderson, and the crash and the noise from the anchor all came to you about the same time, —came to your ears about the same time. Is that right?

A. Not quite.

Q. What is right, then? I want to get what is right.

A. The second whistle; then was a little while and he blew a danger signal, then the crash together.

Q. Then the crash and the danger whistle came

about the same time, and the anchor about the same time, too?

A. Yes, the danger signal, the anchor and the crash, all about the same time.

Q. How long after you heard the second whistle, before you heard the danger signal?

A. I couldn't tell—didn't look at the watch.

Q. Could you approximate that time?

A. Oh, a few seconds.

Q. Only a few seconds?

A. I think so.

Q. You say you went over to the Henderson that night?

A. Yes.

Q. How long did it take you to go from the tow head to the Henderson?

A. About five—four, five, six minutes. I couldn't tell exactly.

Q. Four, five or six minutes?

A. Yes.

Q. Where was the Henderson then?

A. She was lying just a little below the bluff.

Q. Was she the same place she was the next morning?

A. No.

Q. Where was the Samson at that time?

A. He was laying a little further over towards the Washington side. About above the Henderson.

Q. Below the Henderson on the Washington side?

A. Above the Henderson, on the Washington side

of the Henderson.

Q. The Washington side of the Henderson?

A. Yes.

Q. How far from the Henderson?

A. I couldn't tell exactly.

Q. Could you approximate that distance?

A. No, I couldn't.

Q. Were the lights on the Henderson at that time?

A. She was on the bottom.

Q. What is that?

A. She was down on the bottom.

Q. She was at the bottom at that time?

A. All turned over when I got there.

Q. No lights on her then?

A. No.

Q. Did you go to the oil barge that night?

A. No.

Q. You don't know how far she was from the oil barge?

A. No, I couldn't tell.

Q. And you think she was in the same place she was when you saw her next morning?

A. No.

Q. How far was she from the place where you saw her next morning?

A. I couldn't tell exactly.

Q. Was she stationary when you went to her?

A. No, she was sinking down.

Q. Sinking down?

A. Yes.

Q. What do you mean by sinking down?

A. Going down with the current a little.

Q. Going down with the current a little?

A. Yes.

Q. I thought you said she was on the bottom then?

A. Yes, she was on the bottom, but she turned around; she turned around twice.

Q. Which way was her bow when you went that night?

A. I couldn't tell. I just saw the middle of the bottom, is all I see.

Q. You didn't see her wheel?

A. I don't think so; all dark.

Q. How close did you get to her?

A. Pretty close; lay right into the bottom of her, into the hull of the boat, side of it.

Q. Which side did you go into?

A. Well, I couldn't tell.

Q. But you went into her hull that night with your boat?

A. Yes.

Q. Let me understand; I don't think I understand. Do you mean you went to the hull or inside the hull?

A. No; to the outside. We went in to it.

Q. I understand you to say you saw the two rock barges that night?

A. Yes.

Q. When did you see them?

A. I see them when I come back from the Henderson.

Q. Did you see them when you went over to the Henderson?

A. No.

Q. Didn't see them anywhere when you went over to the Henderson?

A. No.

Q. How did you go from the tow head to the Henderson? In as straight a line as you could?

A. No, you go down pretty near to the point of Tenas Illihee Island. Don't just.

Q. You went straight across to Tenas Illihee Island, did you?

A. Pretty near the point of Tenas Illihee Island.

Q. To the point of Tenas Illihee Island; then went up from there.

A. Pretty near straight across.

Q. What?

A. Pretty near straight across.

Q. You went then pretty near straight across from where you were at the tow head to the Henderson. Is that right?

A. Right across from the Henderson over to the tow head, pretty near straight across.

COURT: Tell how you went.

A. I went from the Henderson pretty near over across; from the Henderson to the tow head, straight across.

Q. You went what?

A. Across the river from the Henderson to the tow head.

Q. I am talking about when you went from the tow head to the Henderson, how did you go?

A. We went straight over the river.

Q. What is that?

A. Across the river.

Q. Well, you crossed the river. Where did you cross the river? Where did you cross the river? Did you go over to Tenas Illihee Island?

A. Well, I don't believe I understand you now.

Q. When you went from the tow head to the Henderson, did you go across the river from Puget Island to Tenas Illihee Island?

A. Well, do you mean the first time?

Q. When you went from the tow head to the Henderson that night.

A. Then I went straight for the point below the bluff.

Q. To a point below the bluff from the tow head?

A. Yes.

Q. Is there a point below the bluff?

A. We call it a point anyway.

Q. You mean a compass point below the bluff?

A. No, a point on the shore.

Q. A point on the shore below the bluff?

A. Yes.

Q. And you went straight across there?

A. Yes.

Q. And how long did you say it took you to go—

five or six minutes?

A. Something like that.

Q. And when you came back from the Henderson to the tow head, did you see these barges then?

A. Yes.

Q. Did you go back the same line you went over?

A. No.

Q. How did you go?

A. You see when we went over to the Henderson, the boat was drifting down.

COURT: Did you say it was drifting down?

A. The boat, the Henderson, was drifting down the river. When we came back, we had to haul up again, from the Henderson up to the tow head. When we go to the Henderson we go from the tow head up to the Henderson; when we come back, we go from the Henderson up to the tow head a little.

Q. So, when you went from the tow head to where the Henderson was the first time, you went up the river?

A. Just a little bit.

Q. And when you went from the Henderson to the tow head, you went up the river too?

A. Just a little bit.

Q. How much had she drifted in that time?

A. I couldn't tell.

Q. And on that trip you saw the rock barges?

A. Yes.

Q. And where were they?

A. She was just the Oregon side of the range light,

a little below the tow head.

Q. A little below the tow head?

A. Yes.

Q. Were they anchored?

A. I couldn't tell. I believe they was.

Q. Could you tell whether drifting or anchored?

A. I don't believe were drifting, because you see we came across, and we was hauling right for the tow head, and the tide took us down and we came right, just a little below that. If they was drifting, they would go just the same as we was, and they didn't do it.

Q. You went below them when you came across the second time?

A. Yes.

Q. How near to them did you go?

A. I couldn't tell exactly.

Q. Did you see the other barge?

A. No.

Q. Never saw that at all?

A. Never before morning.

Q. You saw all these barges the next morning?

A. Yes.

Q. Did you see them when the Samson picked them up?

A. No, I didn't see them.

Q. Were they anchored when you saw them next morning?

A. Yes.

Q. They were all anchored?

A. Yes.

Q. Where was the other barge anchored?

A. Below the sandbar.

Q. Below the sand bar?

A. Just a little bit below the sandbar.

Q. I don't understand you, I guess, Mr. Dahl. The next morning you went over to the Henderson a second time, did you?

A. I think I did.

Q. And at that time where was she lying?

A. She was lying just out from the point of Tenas Illihee Island.

Q. Above the point of Tenas Illihee Island?

A. No, just a little below the point on the Washington side of it.

Q. A little below?

A. Just a little below.

Mr. C. E. S. WOOD: You mean the side towards the Washington side of the river?

A. Yes.

Q. You say the Henderson when you—when she passed the tow head, was falling over towards the Oregon side. Is that what you said?

A. Yes.

Q. At what point did she begin falling over towards the Oregon side?

A. I couldn't tell exactly.

Q. Above or below the towhead?

A. Below the towhead.

Q. She began going over to the Oregon side be-

fore she got abreast of the tow head?

A. Yes.

Q. And she went over gradually, did she?

A. Yes.

Q. Didn't go at a sharp angle?

A. No.

Q. Just gradually. Now, I will ask you whether you observed this range of lights that night?

A. What?

Q. Did you look at the range of lights at all that night?

A. Yes.

Q. When did you look at them?

A. When we was drifting.

Q. Did you look any other time?

A. Well, I looked when we went across the river.

Q. You mean when you went over to the Henderson?

A. Yes.

Q. Did you look any other time?

A. When we went back.

Q. You looked at them when you came back. Did you look at them for the purpose of ascertaining when you came back, whether these two rock barges were on the Oregon or Washington side of the ranges?

A. No.

Q. Did you look at them at the time when you saw these two rock barges?

A. Yes.

Q. At the time you saw these two rock barges, you looked at the range lights?

A. Yes.

Q. How did you happen to look at the range lights at that time?

A. We used to look down and look at our boats all the time we go across.

COURT: What is that?

A. We used to look down, and look on the range light, and then go across the river all the time; look for the boats, if there is any boat coming up.

Q. Now, which way were you looking? Were you sitting, when going over from the Henderson, to the tow head, with your face toward the bow of your boat, or toward the stern of your boat?

A. Oh, toward the bow.

Q. And you were coming up the river a little way at that time?

A. Just a little up the river.

Q. So the range lights a little behind you when you crossed that, wouldn't they?

A. Below?

Q. I say, they would be behind you when you crossed, wouldn't they?

A. Well, some way, yes.

Q. What?

A. Some way they would be behind, yes.

Q. And the two rock barges would be in front of you when you were going across, would they not?

A. Not when you get across.

Q. What is that?

A. Not when you get across the range line.

Q. I say, when you got across, they would be above you on the river?

A. Yes.

Q. And when you passed the rock barges, you then looked at the range lights, did you, and you remember doing that?

A. Yes, sir.

Q. And for what reason did you do that?

A. I don't know.

Q. You don't know why you did it?

A. No.

Q. And, when you went over to the Henderson that night, you also remember that you looked at the range lights when you crossed?

A. Yes.

Q. And you remember seeing the range lights when you crossed?

A. Yes.

Q. And you didn't see any rock barges anywhere that night when you went across?

A. No.

Q. And when you went across the next morning, did you look at the ranges?

A. I don't know if I did.

Q. You don't remember looking at the ranges?

A. No.

Q. When you saw the Samson, I understand now that she was—that you first saw her before she turned

into Bugby Hole? You saw the lights over the trees—is that right?

A. Yes.

Q. And then you say her after she turned into Bugby Hole, and saw then her red light?

A. Yes.

Q. Did the Samson have a tow line on the Henderson when you were over there that night?

A. What?

Q. Did the Samson have a tow line on the Henderson when you were over there that night?

A. I couldn't tell. I didn't see her.

Q. Did the Samson leave before you did?

A. No.

Q. She was still there when you were there?

A. Yes, sir.

Q. And you weren't there when she put the tow line on the Henderson?

A. I don't know; I didn't see anything.

Redirect Examination.

Questions by Mr. C. E. S. WOOD:

You say you didn't notice the colored lights on the Henderson or the oil barge—the red and green lights?

A. I don't think I did.

Q. And do you know which side of the boat the red lights are carried, and which the green?

A. The red is from port and the green starboard.

Q. Now, you say that you saw the red light on the Samson when she first appeared way up the river.

That would then indicate that she was crossing the river over into Puget Island, wouldn't it?

A. Well, I just see it when she round the point there.

Q. If you saw it just as she was coming round the point, she would be headed over towards the Oregon side, wouldn't she? As she comes round the point, she headed over toward the Oregon shore—isn't that so?

A. Which light do you mean? If I saw the red one?

Q. All I am trying to get at is, I don't see how you could have seen it. I want to straighten it out, if I can. You say that as you saw her coming around the river, you saw the red light? Now, the red light is on the port side, isn't it? And now, as she comes around the point above you, she is showing you her starboard side, so how could you see the red light?

A. Well, I see it just the same.

Q. How?

A. I did see it just the same, just when she turned around. Rounding the point, you can see it.

Q. How long did you hold it?

A. I don't know. I couldn't tell that. I don't believe held it very long. I didn't notice the light any more; just when she came round the point.

Q. How long was it in a general way before the collision that you saw this red light up the river?

A. I don't know. I couldn't tell.

Q. The red light, when she first rounded the

point is the only colored light you remember of noticing, as I understand you?

A. Yes, I believe it was.

Q. Could you say about what position in the river that would be, when you first saw this red light?

A. I don't know.

Q. See here if you can show on this chart about where it would be. This is Libellant's Exhibit 1. This is Ostervolt's house, and Grove's Slough. That is the big slough over there, and here is the high bluff along here, and the head. And over here is the tow head. There is your tow head. Here is the head of the Tenas Illihee Island, and here is Grove Slough. And here, up here, is Coffee Island, around the bend. Now, what point on this chart was it that you saw her coming around?

A. Right there (Indicating).

Q. I will mark it "ED". That would be the point marked with a cross "ED" on Exhibit 1. It is the point approximately where you think you saw the red light on the Samson as she came around. Is that right?

A. Well, I mean just about the place on the island where I first saw the light. I don't believe she was so close over as that.

COURT: A little louder.

Mr. C. E. S. WOOD: That is the place opposite the island where he saw her. He didn't mean to locate her so in the river; didn't mean to locate her so close to the island.

Q. Now, Mr. Dahl, you were with Ole Grove, were you, that night?

A. Yes.

Q. How many trips did you and Ole Grove make in your naphtha boat over to the Henderson that night, after the collision?

A. One.

Q. One trip after the collision. And that was how soon after the collision?

A. Well, we started from the tow head just as soon as we saw it struck.

Q. Then later on you made another trip down to where she was sunk, as I understood, or am I right about that?

Mr. MINOR: The next morning.

Q. That was the next morning?

A. Yes.

Q. Now, on this first trip, that is right after the collision, Ole Grove says that you took your boat—

COURT: Ole Grove hasn't been on the stand.

Mr. C. E. S. WOOD: I know he hasn't testified, but I am going to put him on. Well, I will put it in this way.

Q. You were in the same boat with Ole Grove?

A. Yes.

Q. Are you sure you didn't take any passengers off?

A. Not as I know.

Q. Any people off the Henderson?

A. Not as I know.

Mr. C. E. S. WOOD: I just want to be sure that is what he said, and his fellow boatsman was there at the time. That is all.

Witness Excused.

Charles Johnson, a witness called on behalf of the libellant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Where do you live, Charlie?

A. On Puget Island.

Q. How long have you lived there?

A. Nine years.

Q. Engaged in fishing?

A. All the time.

Q. With a drift net?

A. Just with drift net, yes.

Q. Were you drifting on the river the night of this collision?

A. Yes, sir.

Q. Where were you at the time the Henderson came up the river?

A. I don't understand that right.

Q. Where were you drifting in your boat when the Henderson passed you?

A. I was three-quarters of a mile, about below where the collision happened when she passed me.

Q. Well, where do you think the collision happened?

A. Well, up abreast of the seining ground. I

don't know exactly the spot.

Q. And you were three-quarters of a mile below that?

A. Yes, sir.

Q. And where would that put you in the river?

A. Well, it would put me just below Cathlamet Slough.

Q. Aren't there two entrances to Cathlamet Slough?

A. No; there is the big river, and the slough above the river that goes to Cathlamet.

Q. And you were below Cathlamet Slough when the Henderson passed you?

A. Yes.

Q. That would be, then, about opposite the sand bar, wouldn't it?

A. Up above the sand bar.

Q. Above the sand bar?

A. Yes.

Q. I don't understand whether you mean above the sand bar or abreast the sand bar.

A. Well, I said I was just below that slough.

Q. Did you notice the Daniel Kern passing that night?

A. Yes, sir.

Q. And did you notice when the Samson came down the river?

A. The Samson didn't pass me.

Q. No, but did you see her come into the river?

A. No.

Q. Did you see or hear the collision?

A. I heard by the whistles there was something wrong. That is all.

Q. Then I will put it this way: About how long before these whistles do you think the Kern passed you?

A. Just as long as it took—Daniel Kern, you said?

Q. Yes, the Daniel Kern.

A. Oh. Why, that is something I can't say for sure.

Q. I mean about? Well, I will put it this way—
Mr. MINOR: Let him answer.

A. Well, I will say—I don't know for sure, but I will say 25 minutes, or something like that.

Q. Where were you when the Kern passed you?

A. I was on the tow head.

Q. On the tow head. Then, what did you do after that?

A. I went out and laid my net out.

Q. Then after the Kern passed, you went out and laid out your net?

A. Yes.

Q. And drifted. When the Henderson came up, you had got down below Cathlamet Slough?

Mr. MINOR: He hasn't said that.

A. Yes, sir.

Mr. ERSKINE WOOD: I am just repeating what he said.

Q. How long does it take you to run from the tow head over to where you lay out your net?

A. Well, I will say it takes me five minutes.

Q. How long does it take you to lay out your net?

A. Be from—I will say seven minutes.

Q. To lay out your net?

A. To lay my net out.

Q. How long does it take you to make your drift?

A. Why, at that time of the fishing season, from the time I leave the tow head until I get back again, it will take me—will be from an hour and ten minutes to an hour and a half.

Q. Can you tell how much of that time it takes you to drift? Can you tell that?

A. What is that?

Q. How long does it take you to drift down to where you take up?

A. Do you mean from the time I leave my net?

Q. From the time you lay your net out.

A. To start to pick it up?

Q. Yes.

A. Or until I get it up?

Q. Well, until you start to pick it up?

A. About thirty minutes.

Q. Had you started to pick it up that night when the Henderson passed you?

A. No.

Q. About how far did you drift below the point where the Henderson passed you until you started to pick up. Just about, that is all.

A. Well, that is something I couldn't answer exactly. I don't know how long that would be.

Q. What course was the Henderson steering on when she passed you?

A. She steered right for the Bugby Hole light.

Q. Was she, or was she not on the Hunting Island range light?

A. She was on Hunting Island.

Q. On Hunting Island range lights.

A. Yes, sir.

Q. Which side of you did she pass?

A. She passed me on her starboard side.

Q. Did you show her a light to do that?

A. I showed my green light.

Q. How far away from you did she pass?

A. Passed me about twenty feet away from me.

Q. Then what did she do?

A. Went by, up the river.

Q. Went by up the river. How did she seem to be steering?

A. She steered fine when she went by me.

Q. Where do you lay out your net?

A. I lay out my net below—below the bluff.

Q. Below the bluff. How far out into the river does your net reach after it is laid?

A. It reaches to the range lights.

Q. Why is it you never cross the range when you lay out your net?

A. For one reason is, if we did we would sure get a steamer what cross on that. Another reason is, there is snags, bad snags on the inside, and we would get them every time.

Q. Where are those snags.

A. About the middle of the drift.

Q. What relation to the lower point of Puget Island?

A. That would be between Cathlamet Slough and Cathlamet Channel about half way.

Q. Somewhere down near the sand bar?

A. Yes, sir.

Q. What is the course of your net after you lay her out? How does she drift?

A. It goes straight down the river, right across, follows the range lights down.

Q. That is, the Puget Island side of your net drifts right along the range?

A. Yes, sir.

COURT: Right across, you mean? Right across the stream?

Mr. GUTHRIE: Right across towards the Washington shore rather than across stream. Not right across the current.

Mr. ERSKINE WOOD: He hasn't said so. He said drifted right down.

Mr. GUTHRIE: No, he said across.

COURT: He said something about right across. You mean one end of your net wouldn't drift faster than the other would go. Right across the stream?

A. Yes.

Q. In the freshet season, in July, and the tide at half ebb, nine foot tide, with the water at that stage, is there any tendency for your nets to go down Clifton

Channel?

A. No.

Q. If the collision happened over on the Puget Island side, abreast of that little slough where the piling is driven—occurred somewhere in that neighborhood, and the Henderson drifted from about that point, could she have drifted over to where you saw her the next morning?

A. No.

Q. Did you see her—you saw her the next morning?

A. I saw her the next morning. I saw her the same night.

Q. Was the Henderson the next morning in the same place you saw her that night, off the point of Tenas Illihee Island?

A. Yes, sir.

Q. How does the current set from the bluff? How does the current run from the bluff?

A. Do you mean close in to shore, or way out in the river?

Q. Well, I mean if you start—if you start something adrift in the river, say, 500 feet out from the bluff, where will it go? with that kind of water?

A. Why, I think she would go right for the point on Tenas Illihee Island. Well, I don't know. If you throw a piece of wood or anything, I couldn't say, but the bigger thing, you know, like a steamer, or anything, why if that struck the shallow water, why, I believe that would go down the channel.

Q. Which channel?

A. Columbia River.

Q. Not the Clifton Channel?

A. No.

Cross Examination.

Questions by Mr. MINOR:

Mr. Johnson, I understand the Henderson came up the river and passed you, at what point?

A. She passed me just a little below Cathlamet Channel.

Q. The Henderson did?

A. The Henderson did.

Q. I understood you to say Cathlamet Slough.

A. Cathlamet Slough, yes. I beg pardon.

Q. What is the difference between Cathlamet Channel and Cathlamet Slough?

A. The channel is Cathlamet Channel, that is for steamers to go back to Cathlamet. Further up is the slough. Kind of cut off that goes right over in Cathlamet Channel.

Q. As a matter of fact, isn't there a channel which runs down, enters, I may say, or begins, just below Cathlamet, and runs down towards Skamokawa, which is called Cathlamet Slough?

A. There is a slough.

Q. Isn't that called Cathlamet Slough?

A. I don't know what we call that. That is something I don't know. I think we got another name.

Q. My recollection is that is called Cathlamet

Slough.

COURT: You are talking of the one back of Hunting Island?

A. I can show it on the chart.

Q. That is the slough that puts out just below Cathlamet and runs around the island, doesn't it?

A. What?

Q. Puts out just below Cathlamet, and runs around a little island?

A. Yes.

Q. Did you never hear that called Cathlamet Slough?

A. I have heard another name on it, but I can't just think of the name.

Q. Now, the slough you mean, I understand, is a little narrow channel between Puget Island and a little sand—

A. (Interrupting) That little sand bar.

Q. Little sand island?

A. Yes.

Q. That little sand island formed there in the last eight or ten years, hasn't it?

A. What is that?

Q. That little sand island formed there in the last eight or ten years, hasn't it.

A. I don't know. That is before my time.

Q. How long did you say you had been down there?

A. Nine years.

Q. Now, you then were right opposite the little

channel which runs between the sand island and Puget Island?

A. No, I was a little below it.

Q. A little below it?

A. Yes, sir.

Q. Then you were about the upper end of the sand bar which lies just below Sand Island?

A. Correct.

Q. Is that right?

A. Yes, sir.

Q. You were there when the Henderson passed you?

A. Was there when the Henderson passed me.

Q. And at that time you hadn't begun to take in your nets?

A. No.

Q. And you were drifting?

A. I was drifting.

Q. At that time?

A. Yes, sir.

Q. And the Daniel Kern passed you when you were on the tow head—is that right?

A. I was tied up at the time the Daniel Kern went down the river.

Q. Tied up where?

A. At the tow head.

Q. At the tow head. How long did you remain tied up after the Daniel Kern passed you?

A. Not very long.

Q. Well, how long?

A. Well, I cannot say on the minute. That is something I don't know.

Q. Well, tell as near as you can. That is all I want to know.

A. It might be three minutes, and it might be seven.

Q. It was not less than three, you think, nor more than seven?

A. No.

Q. Is that right?

A. Yes.

Q. Now, after the Daniel Kern passed, then you went out and laid out your net?

A. Correct.

Q. And you say it takes you about seven minutes to lay your net?

A. Yes, sir.

Q. And to drift down to that point takes how long?

A. To that point?

Q. Yes.

A. It takes me about—well, not more than twenty minutes.

Q. Twenty minutes. And how much below that point do you drift before you begin to take in your net?

A. I said I think something around, might be fifteen minutes, I think.

Q. Fifteen minutes more?

A. No, ten minutes, we will say.

Q. Ten minutes more before beginning to take in your net?

A. Yes, sir.

Q. How long does it take you to take the net in after you begin to take it in?

A. Depends on just how hard I work.

Q. Well, take an average case, working as you do in an average way.

A. Well, at that time the freshet was high, and it was a little harder to take up the net as the tide was so strong. Why, I don't know. I don't think I ever took the time when I started and when I get through. I never did. I don't believe I have.

Q. How far did you drift while you were taking in your net?

A. Well, that depends a whole lot on how your net comes. If it goes in deep water or in shallow water. A net like that drifts slower in shallow water than in deep.

Q. I thought you said your net always drifts the same way right down the channel.

A. It drifts the same way, but not in the same deepness.

Q. If the net drifts the same way, it must be in the same place when you begin to take it up every time?

A. Not necessarily—how it that?

Q. If your net drifts the same way, you begin to take it up in the same way, don't you?

A. Why no, I don't see why they should.

Q. From what side do you begin to take it up?

A. From the east side.

Q. That means the side next to Washington?

A. The Washington side.

Q. And that side I understand—you begin to take it up right on the ranges?

A. Right on the ranges.

Q. And the net floats, as I understand, practically right directly across the channel?

A. Yes.

Q. Now, what difference would there be in the circumstances of one drift with another in the place and manner of taking it up?

A. That is quite a lot of difference. If I lift my net out of two feet of water, or lift it out of twenty feet, or fifty feet, why the current is much stronger in that deep water, and it takes more—the current is stronger in that deep water, then.

Q. The deeper the water is, then, the longer it takes to get the net up?

A. Yes, the heavier it is.

Q. Take a night like July 22, 1911, how would it weigh then?

A. It was a pretty strong current.

Q. Deep water, was it?

A. Yes, sir.

Q. How long did it take you to take your net up after you began—a night like that?

A. Well, I say I never took the time exactly. I couldn't answer. I don't know if I could answer that

question.

Q. Can you tell approximately how long it would take?

A. Well, if I worked good, why, I would take it up in ten minutes.

Q. Take it up in ten minutes?

A. Yes.

Q. How far would you drift in that ten minutes, do you think?

A. Well, I would have my net in when I was down to the range lights.

Q. You mean, when you get opposite Hunting Island?

A. Yes, sir.

Q. And how far is it from the place where you begin to take up your net to the range light of Hunting Island?

A. From low water mark or from the lights?

Q. Well, from where you say you have your net completely taken up. I just want to get the distance between those two points.

A. Well, I will say I will drift—well, I don't know. It is—a quarter of a mile.

Q. A quarter of a mile. Where was the Henderson when you first saw her that night?

A. She came up the channel.

Q. And where were you at that time?

A. I was on the drift.

Q. You didn't see her then, at the time the Kern passed you, when you were on the tow head?

A. No.

Q. She wasn't in sight at that time?

A. She might. I never looked for it.

Q. Never looked?

A. No, sir.

Q. If she had been in sight, do you think you would have seen her?

A. If I had looked that way, and looked for her, I would.

Q. Now, you didn't see the Samson at all that night?

A. No, sir.

Q. Not at all?

A. No.

Q. And the first that you knew of any trouble was when you heard the whistles blowing?

A. Yes, sir.

Q. You didn't hear the passing signals, did you?

A. No.

Q. When the Henderson passed you, she passed on which side?

A. She passed me on her starboard side.

Q. By her starboard side; and what light did you show?

A. I showed a green.

Q. Green light. At that time you were drifting?

A. I was drifting, yes, sir.

Q. At the time she passed you, did you see the Kern?

A. No.

Q. Didn't see the Kern at all then?

A. No, sir.

Q. And she passed you, as I understand now, below the point of Puget Island—the Henderson?

A. Well, what is the point of Puget Island? The point of the sand bar?

Q. No, I mean the point of the island; not the point of the sand bar but the point of the island.

A. She passed me below it.

Q. Below the point of Puget Island and above the point of the sand bar; that is the way it is?

A. Correct.

Q. And you think at that time that 25 minutes had elapsed since the Kern had passed. That is what I understand. Is that correct?

A. No, it would be more than that. Well, something around there—thirty minutes, twenty-five or thirty minutes.

Q. Twenty-five or thirty minutes had elapsed?

A. I should think so.

Q. Between the time the Kern passed you and the time the Henderson passed you. You say you lay out your net below the bluff. How far out in the river do you commence?

A. I commence 160 fathoms from the range light, and lead to the range light.

Q. And how far are you then from the Oregon shore?

A. Well, I cannot say exactly, but I will—I might be 800 feet.

Q. 800 feet, you think. Not further than that, you think? Not further than that, you think?

A. Well, that is something I cannot say. I don't know.

Q. When I say the Oregon shore, I don't mean the shore of Tenas Illihee Island.

A. No. I understand that.

Q. How far would you be when you start to put out your net, from the point of Tenas Illihee Island?

A. Tenas Illihee Island is way down the river from us.

Q. Well, how far would you be from that?

A. How many feet?

Q. Well, measure it any way you choose. I don't care whether you measure it in feet or fathoms, or anything else.

A. Well, that is hard to answer. I don't know where the channel is there.

Q. Well, you are acquainted with the channel there, aren't you?

A. Say 1500 feet.

Q. 1500 feet?

A. Yes.

Q. Would you be up the river from that point, or right opposite that point? Would you be up the river from the point of that island, or opposite that point when you begin to put your net out?

A. I would be up the river.

Q. Now, where does your range end, of the net? It goes, as I understand opposite—it goes to the

ranges and at that time how far would that end be from Puget Island? That is what you call the east end of your net?

A. How far it would be from the range lights to Puget Island?

Q. No. How far would that end of your net be from Puget Island?

A. It would be in the middle—my net would be in the middle of the channel.

Q. How far would that be from the Island, Puget Island?

A. Well, I don't know how wide the river is.

Q. Well, you know the channel there. You say you know the river down there. You certainly ought to be able to estimate distances.

A. Well, I should think about 900 feet.

Q. 900 feet?

A. Yes, sir.

Q. And about what point of Puget Island would your net be opposite to, the range end of your net? What point on Puget Island would it be opposite when you got it out?

A. It would be abreast of—well there is an old slat trap—it would be abreast of that. That is as near as I can come to it. It would be a little up the river from that, a little up the river.

Q. Slat trap you call it?

A. Yes, sir.

Q. How far would that be with reference to what you call the towhead?

A. Just a little below.

Q. A little below the tow head?

A. Yes.

Q. So when your net goes out and you lay it all out, the east end of your net would be just a little below—

A. (Interrupting) the towhead.

Q. (Continuing) The towhead?

A. Yes, sir.

Q. Is the point, the upper point of Tenas Illihee Island above or below the tow head?

A. It is below.

Q. Below the tow head?

A. Yes, sir.

Q. How much is that below the tow head?

A. Well, I said once I thought it was 800 feet.

Q. Now, I haven't understood you to say that at all. You think the upper point of Tenas Illihee Island is about 800 feet below the tow head—is that right?

A. I think so.

Q. You think that is right. That is, measured straight across the channel, is it?

A. Yes.

Q. When you saw the Henderson, you say she was steering to Bugby Hole light? Can you see Bugby Hole Light from that point?

A. Yes, sir.

Q. You can actually see Bugby Hole light?

A. I could see it.

Q. Now, is Bugby Hole light above or below the

point where the range lights strike the Oregon shore?

A. If the light is up above—

Q. What is that?

A. I didn't understand that quite.

Q. Take the range lights, and sight the range lights to a point where they strike the Oregon shore. Understand that now?

A. Yes, sir.

Q. Now, is Bugby Hole light above or below that point?

A. I am not sure. I don't believe I can answer.

Q. What is your best recollection of that?

A. I cannot answer it.

Q. You can't answer it. You don't know whether it is above or below the point where the ranges would strike the Oregon shore. Well, then, when the Henderson passed you, was she steering on the ranges?

A. She was steering on the ranges, yes, sir.

Q. If she was steering on the ranges, and you saw her steering toward Bugby Hole light the Bugby Hole light must be the place where the ranges strike the Oregon shore, wouldn't it?

A. When she passed me, I was afraid she was going too close to me, so I looked down the river, and I saw them two lights over on shore, and I was pretty close in, so I showed by light in good time. I was afraid he was going to come too close to me. That is the reason I know he was right on the course.

Q. Then when she passed you, I understand you

to say that she steered straight for Bugby Hole Light.

A. She might have steered a few feet up above, or further down. That is more than I know. I say she was steering the course when she passed me.

Q. I may have your answer wrong. I just got the answer this way. I just want to see whether I am right, or not. "Henderson was steering to Bugby Hole light on the range lights." I want to see whether Bugby Hole light is the place where the range lights strike the Oregon shore. That is what suggested it to me. I say that could be the same point. Is that your best recollection?

A. I said she was steering for Bugby Hole. I didn't mean to say she was steering right for the light, or anything of that kind she was steering. You asked me what direction she went. I said, she went for Bugby Hole light.

Q. I didn't ask you the question at all. Mr. Wood asked you that question. It was his question. You said she was steering to Bugby Hole light on the range lights, is the way I have it down, but I may have got it wrong. Now, were you a witness before the Inspectors?

A. No, sir.

Q. When did you first learn that you were going to be a witness in this case, and from whom?

A. I learned it from Mr. Shaver and from—what is his name? Mr. Woods.

Q. Mr. Erskine Wood? When?

A. Last fall, I believe. Yes, last fall.

Q. What time last fall?

A. I don't know. I was going to—he just asked me if I knew it and if I was there. That is all.

Q. What time last fall?

A. Well, I can't remember if it was in—if it was in September or—

Q. Some time in September, you think?

A. Some time around September.

Q. And when the Kern passed you, I want to know whether you looked up the river, or not?

A. Why, yes, I did.

Q. And at that time you didn't see the Samson?

A. No.

Redirect Examination.

Questions by Mr. ERSKINE WOOD:

About how far is Bugby Hole light up above the point where the Henderson passed you?

A. Bugby Hole light is—well, that must be a mile any way.

Q. Just come down here, and I will ask you on the chart—Libellant's Exhibit 1. If that is the lower point of Puget Island, and this is the upper point of Tenas Illihee Island; here is the lower point of the bluff; that the old fish trap or piling, Joe's old fishery; this is the sand bar?

A. This is the sand bar? (Indicating).

Q. (Indicating) Grove Slough; Ostervolt's sein-ing ground; Bugby Hole. Where now—

A. Is that the slough I was referring to?

Q. I was going to ask you to mark that. Where do you think now that Bugby light is, about?

A. Bugby Light?

Q. Bugby Light?

A. Well, I couldn't tell exactly where the light is.

Q. I don't want you to tell exactly. I just want you to indicate about where you think it is.

A. It should be here somewhere.

Q. I will show you. This is Coffee Island up here (indicating).

A. Oh, there is Coffee Island? Well, it should be there.

Q. All right. Mark it there where you think it is. (Witness Marked Exhibit 1). Mark "CJ" by the cross, right close beside the cross which you indicated as being Bugby light.

Mr. MINOR: Mark the cross.

Mr. ERSKINE WOOD: He pointed to that.

Mr. MINOR: He didn't understand it.

A. Yes, I did. Here is Bugby. That is all right. I just wanted to find out where I am at.

Mr. MINOR: Go ahead. Where do you think it is?

A. I think it is here (indicating).

Q. All right. Mark that "CJ" there.

Mr. MINOR: Now, put "Bugby Light" by that.

Mr. Erskine Wood marks on Libellant's Exhibit 1, point indicated by witness as Bugby Light.

Q. Now, when you said that the Henderson passed you down by the sand bar steering on the

ranges, and was heading for Bugby light, do you mean she was headed right for that light, and steering for it, or that was her general direction?

A. I mean that was her general direction, and she had them lights—that was the light I was referring to—she had one light over the other. I don't mean steering exactly for the light, steering that direction.

Q. Now, will you mark the slough that you call Cathlamet Slough?

A. Here is the slough.

Q. Mark it there (Witness marks "Cathlamet Slough CJ").

Q. Do you know anything about the speed of the Samson? Have you ever followed her with your boat?

A. Why, I don't suppose it makes the same speed all the time.

Q. Well, I just want to know if you know how she runs down the river, with her barges, whether you have run your boat behind her or alongside her, or have you any means of knowing that?

A. When she is loaded?

Q. Yes, loaded; coming down the river with a half ebb tide, at the end of a June freshet.

A. No, I couldn't answer that question.

Q. Did you make a drift again that night after the collision?

A. No, I didn't make no other drift, before in the day light.

Mr. MINOR: I didn't cross examine on that, but

can cross examine again.

Mr. ERSKINE WOOD: We will recall him.

Mr. MINOR: That is all right; just so I can cross examine.

Q. Did you make a drift again?

A. Not before day light in the morning.

Q. How long after day light did you make a drift?

A. Seven o'clock.

Q. Had the stone barges been moved at that time?

A. No.

Q. Were they still there?

A. They were still there.

Q. Do you know anything about their location?

A. I do.

Q. Where were they?

A. That is the head of Tenas Illihee. (Indicating).

Q. This is the head of Tenas Illihee Island. There is the foot of Puget Island. There is the sand bar (indicating).

A. Where is the range there? (Mr. Minor indicates on Libellant's Exhibit 1). Why, this one was laying, I should judge, she was laying here (indicating).

Q. Mark it. (Witness does so). You mean that was one or two?

A. That is the one.

Mr. ERSKINE WOOD: Where I have indicated "one stone barge" and "CJ" under it?

A. Yes. Them other two were laying—

Mr. C. E. S. WOOD: You will have that chart perfectly illegible pretty soon.

A. Where are the tow heads supposed to be on this chart?

Mr. C. E. S. WOOD: The tow heads are right here (indicating).

A. That is the tow head. It was somewhere between here and here. But I don't know that to be just the exact location of it.

Mr. ERSKINE WOOD: These are meant to be the little sloughs.

Mr. C. E. S. WOOD: Here is Grove Slough where Ostervolt lives up here. Here is the next slough, and there is the next slough.

A. Well, they lay on this side, the east side—not the east side, the west side of the range. If that is the tow head, why they lay down here.

Q. Mark it. (Marks "two stone barges CJ"). About how far—do you mean that would indicate that they were on the Tenas Illihee side of the range?

A. Well, I cannot state exactly. I cannot do that, but they was not very far from the range.

Recross Examination.

Questions by Mr. MINOR:

Mr. Johnson, were those tow boats the same place when they were picked up by the Samson the next day?

A. Why, this is the place where I saw them when it got day light.

Q. Were they anchored then?

A. They was anchored then.

Q. Were they in that same place when the Samson picked them up? Or did you see them pick them up?

A. I saw him pick them up, but I never looked—never noticed.

Q. They were in the same place, as well as you could tell?

A. Yes, sir.

Q. Now, how far was the one stone barge from the shore of Puget Island?

A. Well, I don't know how wide the river is at that point there.

Q. Well, you ought to be able to tell pretty nearly how far it was from the point of Puget Island.

A. Well, if I come within a couple of hundred feet of it, why—

Mr. SNOW: Well, what, if you come within a couple of hundred feet of it—what?

A. I make a mistake.

Q. How far do you think they were—your recollection, not looking at the map.

A. Well, I think they would be—

Q. How far do you think it was from the shore?

A. 600 feet.

Q. 600 feet from the shore?

A. Yes, sir.

Q. And how far do you think the two were from the shore?

A. Well, I—they was at least—from the Washington shore?

Q. Yes—from Puget Island shore.

A. 900 feet.

Q. 900 feet. And were they anchored in deep water?

A. Well, I don't know for sure how deep that is there. I think there is between five and six fathoms.

Q. Between five and six fathoms. The place where the first barge was anchored was very near where you were when the Henderson passed you, was it?

A. Yes, just about.

Q. Just about the same place?

A. Yes.

Q. Did the Henderson pass to the Puget Island side or to the Oregon side of where that stone barge was anchored when she passed you down there?

Mr. C. E. S. WOOD: The stone barge wasn't there.

Mr. MINOR: I know, but he knows where the point is.

A. To my judgment, she would go just between me, about, and where the stone barge was lying.

Q. Just between you and where the stone barge was lying. And how close do you think she would pass to where the stone barge was lying?

A. Well, say there would be—if the stone barge was laying 200 feet from the range, why she passed 200 feet away.

Q. 200 feet?

A. Yes.

Q. You know where the stone barge was lying?

A. Yes.

Q. How close do you think she passed to where the stone barge lay? You know where she passed, and you know where the stone barge was lying?

A. Yes.

Q. Now, tell us how close she passed to where the stone barge was lying?

A. How close to the range?

Q. No. How close the Henderson with her tow passed to where the stone barge was lying?

A. I don't understand that question. If she passed—

Q. Leave the chart alone for a moment.

A. Yes, sir.

Q. You know where the stone barge was anchored, this one stone barge?

A. Yes, sir.

Q. And you know where the Henderson passed at that point, don't you?

A. Yes, sir.

Q. How far was it—was the stone barge from where the Henderson passed along that place?

A. You mean to say, how far up from the range lights?

Q. No, I am just talking about the place where the barge was, and the place where the Henderson was.

A. 200 feet. _

Q. She passed 200 feet to the Oregon side of where this barge was anchored, or to the Washington side of it?

A. Yes, to the Oregon side of it.

Q. In your judgment, then, the stone barge, one of them, was anchored, we will say, right off Cathlamet Slough, and the Henderson passed about 200 feet towards the Oregon shore from her, when she passed that point. That is right now, is it?

A. Yes, sir.

Q. And the other two barges, you say, were about 900 feet from the Puget Island shore?

A. About, yes, sir.

Q. And on the Oregon side of the ranges?

A. On the Oregon side, yes.

Mr. SNOW: On the Oregon side of the ranges?

A. On the Oregon side of the range.

Mr. MINOR: That is what he said.

Redirect Examination.

By Mr. C. E. S. WOOD:

I would like to ask one or two questions. You haven't pretended to fix the place in the river of these barges exactly?

A. No, sir, I couldn't do that.

Q. Have you any knowledge of the speed of the Samson going down the river with her barges?

A. Not at that time.

Mr. MINOR: That is not redirect.

Mr. C. E. S. WOOD: I will ask leave to ask the question. I don't think he understood the question. I didn't mean at that time. That is exactly the point. I will ask leave to ask this one question.

Mr. MINOR: That opens up another subject.

COURT: If the witness misunderstood, let him answer.

Mr. C. E. S. WOOD: We want to let him go to-night, and that is why I wish to ask it now.

Q. Do you know anything about the speed of the Samson going down the river with loaded barges at any time—not this night. Have you any knowledge of her speed?

A. Have seen her many times come down, but it is hard for me to state just exactly what speed she makes.

Q. Have you passed her, or in any way kept up with her, with your own boat?

A. Yes, sir, I have.

Q. And what is the rate of speed of your boat?

A. Well, with the tide I can run 11 miles an hour.

Q. I mean, the same way the Samson goes. How does her speed going down loaded, compare with your speed, when you are running together?

A. Well, she wouldn't go that fast.

Q. No. I want you to give an idea about what her speed is.

A. Well, I don't know. I should think with the tide, she would go four or five miles an hour.

Mr. MINOR: Four or five miles an hour?

A. Yes, with the tide.

Q. Going down?

A. Going down.

Q. How would she compare with your boat in speed, relatively? If you could go 11 miles an hour, would you think she would only go four or five? Have you ever gone along with her, traveled with her?

A. I have not—yes, I have; I have when she is empty, I have gone with her; not when she is loaded.

Q. You don't know about when she is loaded.

A. No.

Witness excused.

Whereupon proceedings herein were adjourned until Thursday, January 10, 1913, 10 A. M.

Portland, Ore., Thursday, Jan. 10, 1913, 10 A. M.

Mr. ERSKINE WOOD: Mr. O'Reilly will be the next witness testifying on the relation between the Transportation and the Standard Oil Company as to the contract of hiring. Mr. Snow is not here, and I would like to wait until he gets here. This testimony will probably be antagonistic to Mr. Snow's contention, and as he is not here, I will put on another witness.

OLE GROVE, called as a witness for the libellant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Grove, where do you live?

Mr. C. E. S. WOOD: I will ask leave to ask the question. I don't think he understood the question. I didn't mean at that time. That is exactly the point. I will ask leave to ask this one question.

Mr. MINOR: That opens up another subject.

COURT: If the witness misunderstood, let him answer.

Mr. C. E. S. WOOD: We want to let him go to-night, and that is why I wish to ask it now.

Q. Do you know anything about the speed of the Samson going down the river with loaded barges at any time—not this night. Have you any knowledge of her speed?

A. Have seen her many times come down, but it is hard for me to state just exactly what speed she makes.

Q. Have you passed her, or in any way kept up with her, with your own boat?

A. Yes, sir, I have.

Q. And what is the rate of speed of your boat?

A. Well, with the tide I can run 11 miles an hour.

Q. I mean, the same way the Samson goes. How does her speed going down loaded, compare with your speed, when you are running together?

A. Well, she wouldn't go that fast.

Q. No. I want you to give an idea about what her speed is.

A. Well, I don't know. I should think with the tide, she would go four or five miles an hour.

Mr. MINOR: Four or five miles an hour?

A. Yes, with the tide.

Q. Going down?

A. Going down.

Q. How would she compare with your boat in speed, relatively? If you could go 11 miles an hour, would you think she would only go four or five? Have you ever gone along with her, traveled with her?

A. I have not—yes, I have; I have when she is empty, I have gone with her; not when she is loaded.

Q. You don't know about when she is loaded.

A. No.

Witness excused.

Whereupon proceedings herein were adjourned until Thursday, January 10, 1913, 10 A. M.

Portland, Ore., Thursday, Jan. 10, 1913, 10 A. M.

Mr. ERSKINE WOOD: Mr. O'Reilly will be the next witness testifying on the relation between the Transportation and the Standard Oil Company as to the contract of hiring. Mr. Snow is not here, and I would like to wait until he gets here. This testimony will probably be antagonistic to Mr. Snow's contention, and as he is not here, I will put on another witness.

OLE GROVE, called as a witness for the libellant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Grove, where do you live?

A. Well, in winter time I live in Portland, and summer time I live down on Puget Island.

Q. How long have you lived down on Puget Island?

A. 24 years.

Q. Do you live up that slough which is named for you?

A. Yes.

Q. Grove Slough?

A. Yes, sir.

Q. And what business are you in down there?

A. Fishing.

Q. Have you been fishing all that time?

A. All that time since I come.

Q. Along that part of the river?

A. Yes, along that part from there and down to Astoria.

Q. Are you the father of Eddie Grove who testified before?

A. Yes.

Q. Where were you on the night of the collision between the Samson and the Henderson with her oil barge?

A. I was lying what we call at the tow head, about a quarter of a mile above the lower end of Puget Island.

Q. Laying at the tow head?

A. Yes.

Q. In your boat?

A. Yes, sir.

Q. Who was your partner?

A. There was Elias Dahl was my partner that time.

Q. In the boat with you?

A. Yes.

Q. What were you doing, lying there at the tow head?

A. We was lying there waiting our turn. A good many boats, and we had to wait so long.

Q. Did you notice the Henderson?

A. Yes, sir.

Q. Coming up the river?

A. Yes, sir.

Q. Did you notice the Samson when she came down?

A. Yes, sir.

Q. Where was the Henderson when you noticed her—when you first noticed her?

A. The Henderson was a little above the range lights the first time we seen it.

Q. That is the first time you saw it?

A. Yes.

Q. A little toward Puget Island—a little up the river from the Hunting Island range lights?

A. Yes, about half way, something like that.

Q. Did you observe her course at all?

A. No, we didn't notice that at that time, because we were laying pretty close to the shore, and they were out in the river.

Q. Did you—well, just describe her course after

she came up abreast of the tow head, as near as you can tell.

A. Then they came just on the range as possible to come, I think. The fishermen there had laid out the net, and he made kind of a little—

Q. Talk louder.

A. He made kind of a little turn and to us people there, made a little to miss that boat.

Q. That boat Eddie was in?

A. That boat Eddit was in. They missed that boat. I suppose that they turned off a little bit to the Puget Island side.

Q. You saw him turn out to pass Eddie?

A. Yes.

Q. Then what did he do?

A. After he passed Eddie, he turned a little back, I suppose to get exactly on his course on the range; a little bit more. He sheared a little more over.

Q. Which way?

A. Over to the Oregon shore. Most all deep water vessels, they head for that point there.

Q. Which point?

A. Hunt's Mill Point, on the bluff above.

Q. Which way is Hunt's Mill point from that high bluff?

A. Well, the Hunt's Mill point is right underneath the bluff—right on the bluff there.

Q. Right at the bluff?

A. Yes.

Q. Did you have any thought that the Henderson

was going pretty far over to the Oregon shore in the shallow water, or did you think anything about that?

A. No, I didn't think anything about too far over; can go pretty far over; there is deep water.

Q. Then did you see the Samson at this time?

A. I saw the Samson, yes. The Henderson passed that fisherman, and then as he passed him, about abreast of the tow head, he blowed the first whistle.

Q. What is that?

(Answer read).

Q. And how far below the tow head, did the Henderson pass Eddie?

A. Oh, I don't know. I suppose he passed him just about 100 feet, something like that. I didn't measure that. Something in the neighborhood; something like that.

Q. Then tell what whistles you heard, and what you saw?

A. They blowed one whistle.

Q. Who did?

A. The oil barge or the Henderson—I don't know which one blowed.

Q. And was that answered?

A. That was answered by one from the Samson.

Q. And then what happened? What did you hear or see?

A. Well, the Henderson—the oil barge, they kept on going their course pretty near—kind of on the Oregon shore from there and the Samson came down

and then in a little while—we didn't take much notice—the second whistle was blown from the oil barge or the Henderson, and then we go to look around and see what was going to be, and then we didn't take much particular notice before was three or four more whistles blew.

Q. Is that what caused you to take particular notice?

A. Yes, the Henderson blew a second whistle, and we didn't hear no answer, and we thought it funny she blew one more.

Q. Then I understand you heard the danger whistle?

A. Yes, after I heard the two whistles.

Q. And then you paid particular attention—is that it?

A. Yes.

Q. Then what happened?

A. Well, it happened, the Samson came down and didn't seem to change his course at all, and the first thing we knew, we heard them three whistles, or about four—I don't know how many, and then a little—in a second or two—I don't know how many there was—and they run right together. We heard a crash, and we heard the anchors, and we saw the Samson put the search light on the Henderson. And we saw sinking down, sinking down stern fast, and he sunk pretty quick.

Q. Then what did you say or do? Did you say anything to your partner?

A. I says, "We will go over there."

Q. Did you say anything about that boat sinking?

A. I says, "The boat is sinking", I says.

Q. And said you would have to go over there?

A. Yes.

Q. Did you go over there?

A. I went over there as fast as we could go, and we got just pretty near over, and some one on the Samson—I don't know who it was, hollered, "Hurry up, for we need help over here."

Q. Where did you go? Did you reach the Henderson?

A. Yes, we reached the Henderson, right alongside of them. We passed the Samson and the stone barges first, you know, and had to go the northwest side of them until we got to the Henderson.

Q. Went on the northwest side of them?

A. Yes.

Q. Did you take any people off the Henderson?

A. Three, I think. John Anderson and some more was all going down in my boat—two women and a man, went off in another fellow's boat that went there.

Q. How was the Henderson then? How was she lying?

A. Lying on her side.

Q. Over on her side?

A. Yes.

Q. Sunk?

A. Yes.

Q. How long do you think it took you to run over to her?

A. Oh, it took, say four or five minutes—five anyhow, something near that.

Q. You had a gasoline boat?

A. Yes.

Q. How long after the collision did you hear these anchor chains you spoke of?

A. They was just about the same time.

Q. Could you see from the lights of the boats or the outline of the boats or anything, could you see them when they came together?

A. Yes, we could see by the lights. Yes, we could see the lights when they came together.

Q. You could see the collision?

A. Yes.

Q. Where do you think it was?

A. Well, I don't know if there was 50 feet below that point, you know the sharp point, kind of a point here. They was right at the point, so near that we couldn't see it. That was the bluff and the trees we could see right there.

Q. You could tell it was close to the bluff?

A. Yes.

Q. Did you see the oil barge anchored the next morning?

A. Yes.

Q. Where was she?

A. The oil barge was lying a little below the point there, near that old piling. They are old piling and

old fish trap a little below that point.

COURT: Did they come together above or below the point?

A. Well, I think they were there right at the point, or a little below, as near as I can get at it.

Mr. C. E. S. WOOD: Did your Honor ask the point of collision?

COURT: Yes.

Q. Where do you think the point of collision was, as compared to where the oil barge lay the next morning?

A. They were just at the same place.

Q. What did you do after you took the people off the Henderson?

A. We was around there and looking to see if anything to pick up is what first we do. Run around there a little while, and stop and the Samson blew—there was a boat come down Cathlamet, and they blew a signal for him to stop, and take the people down to Astoria. That boat didn't seem to hear, and he blew twice, and it didn't seem as though they wanted to stop. And we was going around there looking at the Henderson, and we took a notion to go and lay out the net again.

Q. Before I go into that, before we leave the oil barge, how far off the shore was the oil barge anchored?

A. I don't know; about 250 feet, something like that.

Q. You say you looked around to see whether you would make another drift?

A. Yes.

Q. Did you make another drift?

A. Well, we started to make another drift, and then you see them two stone barges was in the road. and then it got daylight, too, pretty soon, and we seen another barge laying down the river. Then we thought would be all in the road, and we went home.

Q. You didn't make your drift?

A. No, we went home and had breakfast, and came right back out again.

Q. Did you notice where these two stone barges were lying in the river?

A. Yes.

Q. Where were they?

A. Well, they were laying—what we call just out off the tow head. They were lying northwest, right square out from that. That would be northwest to the Oregon shore.

Q. Square out from the tow head?

A. West, that would be northwest, right square across the river.

Q. Which side of the range were they on?

A. About 75 fathoms on the Oregon side of the range.

Q. I didn't understand whether you started to make a drift, and stopped, or whether you just looked around and decided not to make a drift at all.

A. The reason we stopped, we saw another barge down the river, and we thought in the way, and the tide was strong, and no use to make any drift.

Q. Where do you lay out your fishing net?

A. We lay it out from the Oregon shore always, just a little below that point where we was talking about.

Q. Which point—Hunt's Mill?

A. Hunt's Mill Point.

Q. A little below that?

A. A little below that.

Q. Where does the other end of your net reach when it is laid out?

A. Oh, it reaches to the range.

Q. And these two stone barges were anchored in such a position that would prevent your drifting with the net?

A. Yes.

Q. When you lay out your net up there off Hunt's Mill Point, and extend out to the range, how does it drift?

A. They drift naturally down the river, according to the tide; straight down sometimes, and high tide they might draw over to the east side, to the Washington shore, where you get a little below Puget Island.

Q. Where you get a little below Puget Island?

A. Yes.

Q. Well, with the conditions that night, with a nine foot tide, half ebb, how would she drift?

A. She will draw in to the Washington shore with that tide.

Q. At what point will she draw in to the Washing-

ton shore?

A. When you get just about abreast Tenas Illihee Point, then she start to draw over toward the Washington shore.

Q. And from the place you lay out, until you get down abreast Tenas Illihee point, she will go straight down the river?

A. Nearly; on that tide she will go about straight down the river then.

Q. Will there be any suck down the Clifton Channel?

A. No, no.

Q. Did you see the Henderson the next morning?

A. Yes.

Q. Where was she lying?

A. Well, he was lying a little above Tenas Illihee—the point of Tenas Illihee Island; was near between the two points and a little up the river from Tenas Illihee.

Q. Between the range and Tenas Illihee upper point?

A. Yes.

Q. If the collision happened over near the Oster-volt seining ground, over on this side of the river somewhere, somewhere near that little slough where the piling is, do you think the Henderson could have drifted from that place over to where you saw her the next morning?

A. No.

Q. Why not?

A. Can never have done it on no kind of tide.

Q. The current isn't that way?

A. No.

Q. Well, how is that current from that point over near the Ostervolt seining ground?

A. The current goes right straight down along the beach there.

Q. Did you notice the Daniel Kern pass that night, or not?

A. I noticed her pass, yes.

Q. How long do you think the Daniel Kern passed down the river before the Samson came into your sight?

A. Well, we didn't—we didn't get so exactly—we didn't look at the clock, but anyhow, that must be over 40 minutes.

Q. What makes you think it was that long?

A. Well, we had a certain time on the towhead, you know, was from 15 to 20 minutes between every boat, and there were two boats ahead of me, and I go to lay out. Charlie Johnson he lay out after the Kern go by, and Eddie was next and I would be the next, and I didn't lay out, of course.

Q. Did you know anything about the speed of the Samson coming down the river with a load?

A. Makes about eight miles, something like that. I couldn't say exactly, but anyway between seven and eight.

Q. How do you determine that?

A. Can tell that by own gasoline boat.

Q. Have you ever run with your own gasoline boat along with the Samson coming down with loaded barges?

A. Yes.

Q. How fast does your boat run?

A. Well, we can run eight miles and a little better, and I can't follow the Samson.

Q. Can't follow the Samson?

A. No.

Q. Can't keep up with her?

A. No.

Q. You mean, she runs about eight miles or a little better coming down with the current the way it was that night, half ebb tide?

A. Yes, he was between seven and eight. You see, our boats don't run always the same. If you got them in good trim we might—I don't know—the Samson boat don't run all the same, either. Seven or eight miles is as near as I can get to the speed they make.

Q. Have you run alongside the Samson the same way she was going very often?

A. Oh, quite a number of times.

Questions by Mr. C. E. S. WOOD:

Now, that is your slough where you live?

A. Yes. (Referring to drawing).

Q. And this is Puget Island, and this is Hunt's Mill Point, and here are the Hunting Island range lights; that is the range; here is Clifton Channel, and there is the tow head somewhere, just off this little

slough.

A. And Bugby range must be here.

Mr. ERSKINE WOOD: Bugby light isn't marked there.

A. The light and the range isn't the same place.

Mr. C. E. S. WOOD: We don't seem to have Bugby light. You will have to fix that yourself. This is not intended to be exact; just to enable you to show. I offer this in evidence.

Drawing marked "Libellant's Exhibit 5."

Mr. ERSKINE WOOD: Now, Ole, about where do you start to lay out your nets when you first start to lay?

A. We started about here that day. We started here and came down here (indicating on Libellant's Exhibit 5). We lay out sometimes straight across this way, and other times slantways down this way, but not over that line. We are supposed to finish at that line. We come so far. Sometimes we come that far (indicating).

Mr. C. E. S. WOOD: By "that line" you mean the range line?

A. Yes, that range line.

Q. (C. E. S. WOOD): You keep to the Oregon side of that?

A. We keep to the Oregon side of that.

Q. Now, show again where you begin to lay out generally?

A. We begin just about here (indicating).

Q. At the point marked "A" you mean?

A. Yes, that is as near as I can get at it.

Q. And then lay out in what direction?

A. We lay out this way (indicating).

Q. Mark it there.

A. Just about there. (Indicating.)

Q. At the point "B."

A. Of course we go down with the tide, you know, and when we finish we get right down to here. We start there and drift with the tide, and come to opposite here, the tow head, you understand. The current is going down the river pretty fast.

Q. Opposite the tow head at the point "C", is that it?

A. Yes.

Q. And your buoy drifts down with you?

A. Yes.

Q. How does the net run as being across the channel or slanting?

A. Goes across. The end goes faster down. That is the reason we lay out that way in different tide. We are supposed to keep even with the buoy. The buoy drifts with the tide. There is the direction we go when we lay out. We lay out with that buoy just up here (indicating).

Q. The buoy end drifts faster than you?

A. Deeper water over there.

Q. You watch the buoy end.

A. Yes.

Questions by Mr. ERSKINE WOOD:

I didn't ask about the snags there. First, I will

ask you, why do you always lay out to the range, and not further?

A. Well, we got snags right here some place.

Q. Just show about where.

A. We got two or three right there. (Indicating). We got to lay out a certain place. We got a mark on the trees and mountains that we lay out by, so we get clear of them snags.

Mr. C. E. S. WOOD: Locate that one snag again.

A. On the Washington side?

Mr. C. E. S. WOOD: Yes.

A. I think somewhere about here.

Q. Mark "snag" below the point of Puget Island. Well, Ole, if the Henderson was cut loose from the oil barge at the point where you think the collision occurred, near Hunt's Mill Point, and drifted from there, where do you think she would go at that stage of the tide?

A. She go just as near straight down the river as can be. Probably would draw the least thing over this way and the Henderson, he was lying right there.

Mr. C. E. S. WOOD: By "the least over this way," what do you mean?

A. A little northwest. You go from here, and would go down that way. You see goes a little bit to the northwest. (Indicating.)

Q. (Mr. ERSKINE WOOD): Mark about where you think the Henderson was.

A. That is the point of Tenas Illihee?

Q. Yes.

A. It must be somewhere around here (indicating).

Mr. C. E. S. WOOD: The point marked "D." Let him locate in a rough way where he thinks the collision occurred, and then see what the line of drift would be.

A. Well, there it is around that point. That would be all right. Now, we call the point right there, and take the collision point just right there. The point—there is a little difference. Of course it is so close, but a few feet, if you are out we can't tell.

Mr. C. E. S. Wood marks the point "E".

Q. If the collision occurred at "E", do you think that the Henderson would have drifted at that stage of the tide, to the point "D" where you have located her?

A. Yes, that is just where he would drift.

Witness temporarily excused.

Mr. C. E. S. WOOD: Mr. O'Reilly is here now, and I would like to defer the cross examination.

D. C. O'REILLY, a witness called on behalf of the libellant, being first duly sworn, testified as follows.

Direct Examination.

Questions by Mr. C. E. S. WOOD:

Mr. O'Reilly, you are the President of the Oregon Round Lumber Company?

A. I am.

Q. And the active business manager?

A. I am.

Q. Were you such in July, 1911?

A. I was.

Q. Part of the business of that corporation is towing on the river, is it?

A. Yes.

Q. I wish you would explain the facts connected with the hiring of the Henderson to tow Oil Barge 93 up from Astoria on July 21st, the time she was wrecked.

A. We—I think we either got a wireless from the ship, or from San Francisco, or both,—I don't remember exactly—that the Atlas would be off the bar into Astoria at such a time, and asked us to arrange to tow the barge up the river; take the barge away from the Atlas and—

Mr. MINOR: Speak louder, Mr. O'Reilly, will you?

A. As we had no boat of our own available to make the tow—

Mr. C. E. S. WOOD: Speak a little louder for Mr. Minor.

A. I asked Mr. Shaver, or asked the Shaver Transportation Company if they would take the tow. They said they would, and they sent the Henderson down for 93.

Q. You turned the order over to them?

A. Yes.

Q. And have you any interest in the Henderson you or your corporation?

A. None.

Q. Or in this litigation at all?

A. None at all.

Cross examination.

Questions by Mr. SNOW:

Mr. O'Reilly you had a contract—

A. I beg pardon.

Q. You had a contract with the Standard Oil Company to tow these barges from Astoria to Portland and return.

A. Didn't have a contract. We had an understanding that we would tow their barges when they asked us to do that.

Q. You had some letters passing, didn't you?

A. Yes.

Q. Between yourself and the Standard Oil Company?

A. Yes.

Q. I show you, Mr. O'Reilly, a letter from you to Mr. Rholfs, Manager of the Marine Department of the Standard Oil Company, dated February 2, 1907, and what purports to be a reply to that letter from the Standard Oil Company to you, dated February 15, 1907; another letter from you to W. S. Rheem, Manager Marine Department, Standard Oil Company, dated February 18, 1907, and reply to that letter, dated February 21, 1907. I show you also a letter of July 19, 1907, purporting to come from your company signed D. C. O'Reilly, and a reply to that letter

dated July 22, 1907. Do you recognize that correspondence as passing between you and the Standard Oil Company, on this subject of towage?

A. Why, I certainly recognize my own letters, and I have no doubt that I received the others also.

Q. You have the original letters from the Standard Oil Company to your company?

A. I believe we have, yes, sir.

Mr. SNOW: I offer that correspondence.

Mr. C. E. S. WOOD: No objection.

Mr. SNOW: I will read them and withdraw them.
(Reads as follows):

“DIAMOND O LINE

Oregon Round Lumber Co.

Portland, Oregon, Feb. 2, 1907.

J. C. Rholf,

Marine Department, Standard Oil Co.,

Oakland, Calif.

Dear sir:

I have been unable to write you sooner in the matter of towing your oil barges, as the O. R. & N Co., had no established rate for a service from Astoria to Portland and return other than rate from the sea to Portland and return, and before I could make figures, necessarily had to know what they would do, and I now beg to advise, we can engage to tow your barges No. 3 or No. 91 from Astoria to Portsmouth and return at a rate of \$280.00; from Goble to Portsmouth and return to Astoria \$175.00. It would take about 20 hours to tow a loaded barge from Astoria to Ports-

mouth, and about 10 hrs. for the empty from Portsmouth to Astoria; from Goble 10 hrs., loaded to Portsmouth, and about 10 hrs. empty from Portsmouth to Astoria. This is allowing ample time, and I believe we can do better.

Yours truly,

Diamond O Line

DCO'R

D. C. O'Reilly."

COURT: Where is Portsmouth?

Mr. SNOW: Below Portland on the Willamette River, maybe a mile or two down the river here.

Mr. SNOW (Continuing):

"February 15th, 1907.

SUBJECT:

TOWAGE—Barge No. 91.

Mr. D. C. O'Reilly, Mgr.,

Diamond O Line,

Portland, Ore.

Dear sir:—

We beg to acknowledge receipt of your letter of the 2nd quoting us rates for towing our barges in the Columbia River.

Wish to state that the Str. "Atlas" will leave San Francisco about February 17th with Barge No. 91 in tow, and we wish you to have your tugboat at Astoria on the arrival of this barge and tow her to Portsmouth; after she is discharged tow her back to Astoria and deliver her to the Str. "Atlas."

I will telegraph you the date and time this outfit leaves San Francisco in order that you may be pre-

pared to pick up the barge without delay.

Yours truly,

FRC/C

”

“DIAMOND O LINE

Portland, Oregon.

February 18, 1907.

W. S. Rheem, Manager,

Marine Dept., Standard Oil Co.,

Oakland, Calif.

Dear sir:—

Referring to your letter of February 15th. In writing our letter of February 2nd, we did not go into subject with the detail we might, particularly, as the writer discussed the matter pretty fully with your Mr. Rholf.

I explained to Mr. Rholf that we towed on the river with a stern wheel river boat, and not a tug, and that there might be times when the weather in Astoria harbor was so rough that a stern wheel boat could not make fast alongside a vessel, in which case it would be necessary for the “Atlas,” or other Ocean boats to bring the tow up river to a point where we could safely take hold. We would like to know if this condition is understood by you?

In the matter of Pilot, we wired you yesterday, asking if the Captain of the barge would arrange for a pilot on arrival at Astoria, being uncertain if you understood that it would be necessary to employ a regular branch pilot for the barge. We assume that the “Atlas” will be in Astoria Wednesday morning, and

we figure on sending our tow boat down Tuesday night. Please advise.

Yours truly,

Diamond O Line

D. C. O'Reilly."

"Feb. 21, 1907.

The Diamond "O" Line,

Mr. D. C. O'Reilly,

181 Burnside Street, Portland.

Dear sir:—

We received a telegram today from our agent at Portland, stating that on account of certain unavoidable circumstances which have transpired, he is not in a position to take the cargo of Barge No. 91 this trip. We wired him today to advise you of this fact, it being necessary for us to take Barge No. 91 from Astoria to Seattle, instead of sending her to Portsmouth, as originally planned. This of course will necessitate our refusing your services this trip. We are very sorry these conditions have arisen, and hope you will look at it in a favorable light, and make us such charge as you deem just for the time which you tied up your tow boat.

We are in hopes in the near future that we shall send barges of oil to Portsmouth, and shall be pleased to have you tow these barges at the rates you quoted. We shall telegraph you each time the barge leaves Richmond for Portland, so that you may be on hand with your towboat.

Hoping the above explanation of this present

change of orders may be acceptable to you, I remain,

Yours truly,

FRC/M”

“DIAMOND O LINE

July 19, 1907.

Mr. W. S. Rheem,

Manager Marine Department,

949 Filbert St., Oakland, Cal.

Dear sir:

In the matter of towing your Barge No. 91. At the time we figured out the rate of \$280 for round-trip between Astoria and Portsmouth, we were under the impression her registered tonnage was 1750 tons, and we so advised the O. R. & N. Co. In looking further into the matter we now find, however, her tonnage is 1850, which would make the towing rate \$300.00, instead of \$280.00. We will have to charge you on \$300.00 basis hereafter.

Yours truly,

Oregon Round Lumber Co.

DCO’R

D. C. O’Reilly, Manager.”

“505-18th Street, July 22, 1907.

Subject: Towage—Barge No. 91

The Diamond “O” Line,

181 Burnside Street,

Portland, Ore.

Dear sir:—

We beg to acknowledge receipt of your favor of July 19th, changing rate for towing Barge No. 91

from \$280 to \$300. This change will be satisfactory to us.

Yours truly,

FRC/M

....."

Q. Mr. O'Reilly, having no boat available to tow on that particular occasion, you asked Mr. Shaver if he would tow the boat?

A. Yes.

Q. And he did take over the tow at the same rate that you were being paid by the Standard Oil Company?

A. He did, sir.

Q. The Standard Oil Company then paid you no money for towing the barge in question which was in this accident?

A. They did, sir.

Q. And you paid the Shaver Transportation Company?

A. Yes.

COURT: This arrangement regarding Barge 91 was the same with other barges—93?

A. 93 and 91 are the numbers of the Standard Oil sea-going barges on this coast.

COURT: Is 93 mentioned there?

Mr. SNOW: I will explain that. In this correspondence Barge 93 was mentioned. As a matter of fact, don't you know that the barge was originally called No. 3, and then changed to 93?

A. I am not aware of that fact, no.

Q. At any rate, Barge 93 is one of the barges

which this correspondence refers to.

A. Well, if 93 is figured in there, it is, yes.

Q. Well, 93 is mentioned. What we call 93 is mentioned in your letter as No. 3.

A. Well, that may be. I didn't understand No. 3 was the one in the accident, in the beginning.

Mr. SNOW: Do you want me to offer proof, Mr. Wood?

Mr. C. E. S. WOOD: Not if you say that is the fact.

Mr. SNOW: The fact is, Barge 93 was changed to No. 3 and back to 93 again, because of some confusion in regard to some eastern barges, and for keeping track of the numbers. And it may be referred to as Barge 93. It was referred to in the correspondence as Barge 3, but has been changed since the correspondence to 93.

Mr. WOOD: Well, I understand this change was never brought to the attention of the Oregon Round Lumber Company. The Oregon Round Lumber Company had no knowledge of this change?

Q. Mr. O'Reilly, as a matter of fact, you did not advise the Standard Oil Company, or any of its officers at San Francisco, of the turning over of the tow to the Henderson on this occasion?

A. I don't remember whether we did or not, but as a matter of fact, the original, understanding was—the question Mr. Rheem put to me originally when we talked about the business was whether we could take care of it.

Q. I don't care about that. I am asking as to whether or not as a fact, you advised the—

A. (Interrupting) I couldn't say without looking up the records.

Redirect Examination.

Questions by Mr. C. E. S. WOOD:

Mr. O'Reilly, was this the only instance in which you were unable to tow for them?

A. No.

Q. Or did it happen at other times before this?

A. It happened very frequently.

Q. And did you turn over those orders in the same way?

A. Yes.

Q. Did the Standard Oil people here in Portland know about this?

A. They must certainly have known.

Q. What?

A. I think—I am sure they did.

Q. What was the understanding that you were talking about—that you had in the conversation with Mr. Rholfs?

A. I said Mr. Rheem.

Mr. SNOW: This conversation occurred in San Francisco, before the correspondence?

A. It was the conversation referred to in the correspondence.

Mr. SNOW: The only contract you have with the Standard Oil Company is set forth in the correspond-

ence?

A. That is only a small part of the correspondence that passed between us.

Mr. SNOW: Then you have other correspondence with them on this?

A. Yes.

Mr. SNOW: We ask for the correspondence, if the Court please, instead of having any talk in San Francisco. We object to this.

Mr. C. E. S. WOOD: We will be glad to produce such correspondence as is relative. I didn't anticipate it, but will be glad to produce it; but outside of that—this is not a formal contract.

COURT: Objection overruled. It is better to have the matter in the record, than run the risk of rejecting something that should be in. Exception allowed.

Mr. SNOW: My objection goes to the conversation which the witness was asked about by counsel, on the ground that the conversation is irrelevant and immaterial, and there is written correspondence which forms the contract.

Objection overruled. Exception allowed.

Q. State first the conversation with Mr. Rholfs.

A. I happened to be in San Francisco, and Mr. Rheems sent for me. One of the pilots had given him my name. I went over to see him, and he said he wanted to make arrangement for the prompt handling of their oil barges when they came in the river, and said that the O. R. & N. Company would not agree to have a boat at Astoria immediately on arrival of

one of the vessels. And I discussed the matter with him, and he asked as to our capacity to do the work. I told him we had but one towboat that was suitable to make such a tow, but that we would undertake to see, if we didn't have a boat, that some of our neighbors would do the towing for them, and I thought possibly the O. R. & N. would be in a position to do it at times, but we would look after it for them. And we discussed rates and times in an offhand way, and then I believe he turned me over to Mr. Rholfs and we discussed it, and as a result of the conversation, I came home and wrote that first letter referred to,

Q. Will you look over your files and produce any further correspondence relating to this particular matter?

A. Yes.

Mr. SNOW: Or relating to any matter of towing barges of the Standard Oil Company.

Mr. C. E. S. WOOD: By this particular matter, I don't mean this one barge. I mean the matter of towing these boats.

COURT: Did you make any charge for commission, or anything of that kind, where you turned it over to some one else?

A. None whatever.

Witness excused.

The following letters and telegrams were later produced by Mr. O'Reilly, Mr. Wood and Mr. Snow stipulating that they should be copied into the record.

“WESTERN UNION TELEGRAPH CO.

July 5, 1911.

Captain Kirkwood,

Standard Oil Barge No. 93,

c/o Standard Oil Co., Astoria, Ore.

On instructions from San Francisco arranged to bring ninety three direct to Portsmouth and stop at St. Helens and Astoria returning. If you change this arrangement will make increase in cost of tow.

Oregon Round Lumber Co.”

“NIGHT LETTER

Western Union Telegraph Company

San Francisco, Cal. July 19, 1911.

Oregon Round Lumber Co.,

Portland, Ore.

ATLAS with Barge No. Ninety three sailed last evening for Portland. Will want you to handle barge from Astoria as usual. Captain of ATLAS has been instructed to advise you by wireless what time he will have the barge at Astoria.

748pm

J. C. Rohlf’s.”

“NIGHT LETTER

THE WESTERN UNION TELEGRAPH COMPANY.

San Francisco, Cal. Aug. 23, 1911

Oregon Round Lumber Co.,

Portland, Ore.

Barge ninety one sailed from here yesterday in tow of tug Hercules for Astoria and Portland. We will not require your tow boat this trip as Hercules will do

towing up and down the Columbia River.

J. C. Rohlf's.

916pm."

"STANDARD OIL COMPANY,

505 18th St., Oakland, Cal. Nov. 8, 1907.

Subject: Towing Barge No. 91.

The Oregon Round Lumber Co.,

181 Burnside Street,

Portland, Ore.

Gentlemen:-

We return herewith your bill of October 22nd, and would ask if you cannot kindly reduce the terms therein. You will remember that your charge for towing from Astoria to Portland and return to Astoria was \$300.00, and on a mileage basis your bill would seem to be entirely out of reason. We understand the distance from the mouth of the Willamette to our Portland wharf is about 8 miles, making a total tow of—say 16 to 18 miles, and we think \$75.00 would be a very fair rate for this towage, and hope you can meet us to this extent.

Your charge of \$20.00, for two hours' delay, we can have no objection to.

Yours truly,

JCR|M 1 enclos. W. S. Rheem, per J. C. Rohlf's.

P. S. We also enclose your second bill which has just come to hand J. C. R."

"Nov. 13, 1907.

W. S. Rheem, Manager Marine Department, Standard Oil Co., Oakland, Calif.

Dear sir:-

Replying to your favor of November 8th, and re-

turning herewith bills for towing Barge No. 91. We charged you for this service the same figures that we charge other companies for a like service, and, although the charge does seem high for the distance traveled, the rates are in line with the customary charge of all tow boat companies, particularly, the O. R. & N. Co; as a matter of fact, the O. R. & N. Co. are supposed to do all the ship towing, and fix the rates, and whenever any of the outside boats get any of the work to do, they have to conform to the O. R. & N. Co's rates.

We don't want you to feel that we are overcharging you for this service, and will be glad if you will confer with the O. R. & N. people in the matter for your satisfaction.

Yours truly,

DCO'R.

DIAMOND O LINE."

"Dec. 23, 1907.

W. S. Rheem, Manager,

Marine Dept. Standard Oil Co.,

Oakland, Calif.

Dear sir:

Referring to your letter of November 19th in the matter of our bills for towing barge No. 91 between Morgan's and Portsmouth. We would like to satisfy you in this matter, but cannot see how we can consistently reduce our charges. They are in accordance with the prevailing rates which are paid by other Companies without demur. As a matter of fact we had to engage an outside boat to make one of these

tows, and paid them what we charged you.

The charge does appear high as compared with prices quoted for a longer tow, but where the shorter tows are made entirely at convenience of the ship it often occurs that the move kills as much time for the tow boat as a much longer run, and other business has to be refused, and the tow boat lays idle in order to move an oil vessel when it is ready to go.

In quoting figures on the Astoria and Goble tows, it was the understanding of the writer that barges would be brought into Astoria by steamers enroute to Puget Sound, and taken away on their return trip which would enable us to do the towing somewhat at our convenience, but this hasn't been the case with the No. 91; as a matter of fact, there has been very little in the towing for us as it is worked.

Yours truly,

DCO'R.

DIAMOND O LINE."

"STANDARD OIL COMPANY,

461 Market St. San Francisco, Cal. June 6, 1911.

The Oregon Round Lumber Company,

Portland, Ore.

Gentlemen:

This is to advise you that our Steamer "ATLAS" and Barge "No 93" will be due at Astoria about June 9th or 10th. Will you kindly have your tow boat meet the Barge at Astoria and tow her to Portland? After her cargo is discharged, please tow the Barge to anchorage off Astoria, where the Steamer "ATLAS" will again take her in tow. We have instructed

Captain Daniels of the Steamer "ATLAS" to advise you by wireless just what time these vessels are due at Astoria.

Yours truly,

J. C. Rohlf, Manager,

JEH|ES

By J. E. Hutchinson.

"July 7, 1911.

Mr. J. C. Rohlf, Mgr.,

Marine Dept. Standard Oil Co.,

San Francisco, California.

Dear sir:-

In accordance with your favor of June 29th, we arranged to tow barge No. 93 from Astoria to Portsmouth, stopping at St. Helens with oil for the McCormack Lumber Co., on the way down, and also docking the barge at Astoria on the return trip to pump out the oil for that place which your Mr. McDermott advised us would be necessary.

Upon arrival of tow boat at Astoria, Capt. Kirkwood of the barge insisted upon being docked at that point and pumping out the Astoria oil and stopping at the McCormack Lumber Co., St. Helens, on the way up claiming he had positive orders from you to do this and under the circumstances we changed our arrangements accordingly.

There will be an additional charge for docking barge at Astoria and making the run into St. Helens Slough to the McCormack plant which will be included in our bill which we will forward in due time.

To avoid any friction or misunderstanding in the

future would respectfully suggest that your orders to the barge captain be the same as are given to us, or let it be understood that we are to follow the barge captain's orders regardless of instructions received from your office.

Yours truly,

OREGON ROUND LUMBER COMPANY.

R.J.A.O'R."

OLE GROVE resumes the stand.

Cross Examination.

Questions by Mr. MINOR:

Mr. Grove, the tow head that you speak of, lies about the mouth of a little slough, doesn't it?

A. A little above.

Q. Right above the mouth of a little slough?

A. Yes, a little ways above the island, a quarter of a mile.

Q. A quarter of a mile from—

A. (Interrupting) The point of the island up.

Q. That is the northwest point?

A. Well, it is the northeast, you may say. The island lays south and north right there. From Bugby Hole down to the point, the island is north and south.

Q. How far is it from the tow head to the land of the island?

A. Well, on low water, there might be ten fathoms and four or five different poles there, one boat tied to one pole and another another pole; might be twenty

boats there; might be fifteen fathoms apart, and yet we call it a tow head.

Q. Is there any object at this tow head that you speak of?

A. What?

Q. Is there any object there that marks the tow head?

A. I don't understand that.

Q. Is there any object, any structure, any object of any kind that marks the tow head?

A. I don't know what that means.

Q. Well, I mean to say, is there any house there that marks the tow head?

A. Yes, a little bit of shanty and the slough.

Q. How far is that shanty from land?

A. You can walk from the shanty to land on both sides.

Q. You can walk?

A. Yes.

Q. When you speak of the tow head, do you speak of the shanty or some point outside?

A. Outside the shanty, then pilings.

Q. How far out from the shanty to the point you designate as the tow head?

A. I guess about 50 feet, something like that.

Q. 50 feet?

A. Might be 50; might be 75. I never measured that there, you know.

Q. Any piling around this point and shanty?

A. Outside the shanty.

Q. How far out does this piling extend?

A. I don't know; never measured; that is what I told you. Anyhow, I think 50 or 75 feet.

Q. How far is it from this tow head to the mouth of the slough on which you live?

A. Three-quarters of a mile.

Q. Three-quarters of a mile. How far is it from the tow head to the bluff on the Oregon side?

A. Well, that I haven't measured. I couldn't say exactly how far that is.

Q. Well, give your best judgement.

A. Oh, I couldn't, because that is a thing I haven't measured, from the tow head to the bluff. You know that is southwest, a ways up the river. That would be quite a little ways. I don't know exactly how far it is.

Q. Well, how far do you think it is? Give your best judgement about it.

A. Well, maybe half a mile—probably a little more.

Q. It is further, you think, from the mouth of your slough to the tow head, than it is from the bluff to the tow head?

A. Sure it is.

Q. How far is it from the tow head over to Tenas Illihee Island?

A. Well, that is more than I know. I never measured it.

Q. Well, give your best judgement about it.

A. Well, that is hard to tell. Half a mile on water

won't show very far, and there is more than half a mile.

Q. More than half a mile?

A. Yes, more than half a mile.

Q. How far from the tow head to the range line?

A. From the tow head to the range line is 110 fathoms.

Q. From the tow head to the range line is 110 fathoms?

A. Yes, straight east and west; not slantways; up and down the river you can make 120; can make more out of it. Straight east and west, straight in from the range is 110 fathoms.

Q. You have measured that, have you?

A. I measured my net, yes.

Q. Now, I understand when you first saw the Henderson she was below the tow head?

A. She was a little below there.

Q. How much below the tow head when you first saw her?

A. Just about abreast the point of the island, passing that fisherman we call Charlie Johnson.

Q. About the point of the island?

A. A little below the point of the island.

Q. At that time you saw she was above the range lights?

A. What was above?

Q. The Henderson?

A. I don't know whether was off the range, or not. I was lying on the tow head and the Henderson was

down below the Point of Puget Island.

Q. I understood you to say that at that time the Henderson was a little above the range lights.

A. Couldn't be above the range lights; had to be out of sight for me if above the range lights. There was another fisherman, so he went around. He went around both of them. He passed my son Eddie.

Q. Then I misunderstood you. I understood you to say that when you first saw the Henderson, she was above the range lights.

A. Oh, above the Hunting Island range, yes.

Q. Hunting Island range light.

A. That is right, above there.

Q. How much did you say she was above that?

A. We haven't measured all them things, you know. I don't know exactly how far it is. We know the distances what we fisherman talk. It might be way off. Some call it one mile, some a mile and a half, some a mile and a quarter, whatever it is.

Q. I understood you to say—I want to get the matter straight, because I don't understand you very well, and I don't want to be misrepresenting the record. I understood you to say when you first saw the Henderson, she was above the range lights, and about half way between the range light and the island.

A. That would be just about right, at the sand bar, about half way, yes.

Q. Now, at that time did you see the Samson?

A. No, we didn't see the Samson yet.

Q. Hadn't seen the Samson then?

A. No.

Q. And she passed your son after you saw her?

A. Well, yes.

Q. Where did she pass your son?

A. She passed my son a little below the tow head, what we call.

Q. How far below the tow head?

A. Well, I didn't measure, but anyhow there was 60 fathoms anyhow.

Q. You think she passed your son about 60 fathoms below the tow head?

A. Yes.

Q. That means below the east and west line of that tow head?

A. North and south, that goes. Down the river is north, then, and up the river south.

Q. You say about 60 fathoms?

A. That would be 60 fathoms below—down the river.

Q. I want to know how you measure that 60 fathoms.

A. I am sitting here. Here is the tow head line here, and he is laying there, and I call that 60 fathoms, (indicating on Exhibit 5).

Q. Wait a minute. What I want to get at is, when they passed Eddie.

A. Yes.

Q. It was more than 60 fathoms from you to where Eddie was?

A. Yes.

Q. Now, you say 60 fathoms. That means 60 fathoms below a line drawn east and west of the tow head, does it not?

A. 60 fathoms means he is down the river, and from the tow head, and out to the range is 110 fathoms. Out to the range west and had to go north, where Eddie was lying. The Henderson came up, and he was below. Below is down the river, we always call it.

Q. That is all right, but I want to get the measurement, when you say 60 fathoms below the tow head, I want to know whether you mean 60 fathoms below a line drawn out straight east and west from the tow head.

A. I mean 60 fathoms north, down the river.

Q. North of that line?

A. Yes, sir.

Q. Now, the Henderson made a turn to pass Eddie?

A. Yes.

Q. And where did the Henderson get back on the range lights, or get on the range lights?

A. They came back on the range lights about abreast of the tow head; maybe a little above, but that is as near as I can get.

Q. Just about opposite the tow head?

A. Yes.

Q. Where was the Samson when you first saw her?

A. Came in sight in Bugby Hole.

Q. Bugby Hole?

A. Yes.

Q. And where was the Henderson when you saw the Samson come in sight?

A. The Henderson—he just passed round Eddie when we seen the Samson come in sight.

Q. Just passed around Eddie?

A. Yes.

Q. Where was the Henderson when she gave the first whistle?

A. She was just a little bit above the tow head, what we call.

Q. Above the tow head?

A. Yes, a least little bit.

Q. Was she on the ranges then, or not?

A. Was on the range then.

Q. On the range then?

A. Yes, sir.

Q. Now, that whistle you heard answered by the Samson?

A. The Henderson or the oil barge blew the first one, and the Samson answered one.

Q. You heard that whistle answered?

A. Yes, sir.

Q. What lights did you see on the Samson at that time?

A. We saw the green lights.

Q. Anything else?

A. We saw the headlight—two headlights and see the lights on the barge and we see the green light.

Q. Couldn't see the red light?

A. No.

Q. The red light wasn't in sight then?

A. No.

Q. That was at the time when the Henderson blew?

A. That was the time when the Henderson blew, yes.

Q. So at the time the Henderson blew, there was only a green light of the Samson showing?

A. That was all we could see. All that showed. I don't know what the Henderson can see. We were lying on shore on one side, and we couldn't see anything but the green light.

Q. Now, from where the Henderson was could she see anything but the green light?

A. That is more than I could tell. I didn't watch that. I wasn't out there where the Henderson was.

Q. The Henderson, after she passed the range light, as I understand, went over toward the Oregon shore?

A. Yes. She kept on sheering a little, striking the deep water there; she goes there; heads for that point.

Q. In going over to the Oregon shore, she was heading directly into the teeth of the current, wasn't she?

A. Heading against the current; heading southwest, and headed for the point over there, and that sheers over to the Oregon shore.

Q. That was right towards the current, wasn't

it?

A. Right against the current, yes; a little by the side of the current; she had a little on one side.

Q. And the current on that side is stronger than it is on the Puget Island side?

A. Yes.

Q. How long was it after the Henderson blew the first whistle before she blew the second whistle?

A. Well, we didn't take no notice of the time, because I don't know how long it was. We didn't pay no attention to time. We were laying there talking by ourselves.

Q. You didn't see the Henderson after the first whistle was blown?

A. Yes, but we didn't take no notice of either the Samson or the Henderson before the Henderson and the barge blew the second whistle, and we was wondering what that second whistle was supposed to be for and then we looked up.

Q. Now, you didn't pay any attention to the Henderson after she blew the first whistle until the second whistle blew?

A. No.

Q. Was she in sight?

A. What was in sight?

Q. The Henderson?

A. The Henderson was coming up the river. Yes she was right abreast of us.

Q. What could you see?

A. We could see the lights anyhow, if we couldn't

see anything else. I could see them masts; they was sticking pretty high up; could see them pretty near over the mountain.

Q. Could see the mast and see the lights?

A. Yes.

Q. What lights did you see?

A. We didn't see nothing but the bright lights, we didn't.

Q. Nothing but the bright lights?

A. No, he had his head away from us.

Q. Could you see any lights on the oil barge?

A. No, the oil barge was on the other side.

Q. Could you see the outline of the boats?

A. I could see the bright lights on the boat.

Q. Could you see the outlines of the boats, I say. Could you see the shape of the boats?

A. What?

Q. Could you see the hulls of the boats—the outline of the boats?

A. I couldn't see those very good; so dark.

Q. Now, when the second whistle was blown, what could you see of the boats?

A. All we could see was those lights.

Q. You could see lights?

A. Yes.

Q. What lights could you see?

A. Well, we seen the bright lights, the Samson, we seen the green light on him and two head lights and one or two lights on that stone,—maybe one light on the stone barge.

Q. Could you see the red light of the Samson?

A. No.

Q. You couldn't see that at all?

A. No.

Q. Did you see the red light of the Samson at all?

A. No.

Q. Never saw that at all?

A. I couldn't see that, no.

Q. How far was the Henderson from you in your judgment at the time she blew the second whistle?

A. Well, I don't know. We didn't never measure that very close you know. Dark you know, and it shows a little funny on the river. I couldn't say how far it was.

Q. Give your best judgment.

A. Judgment might be no good at all. We got an idea to ourselves, and I suppose the Henderson, at the time he blew the second whistle, he was in the neighborhood of 300 fathoms away.

Q. When she blew the second whistle?

A. Yes.

Q. 300 fathoms. And you didn't hear the Samson answer that whistle?

A. No, I didn't notice the answer.

Q. How long after the second whistle was sounded before you heard the number of whistles?

A. Oh, it wasn't very long.

Q. Well, how long?

A. Oh, well, we didn't have no watch in our hands. We couldn't tell.

Q. Give your best judgment.

A. Those boats were quite a little distance at the time. One was going down with a strong current and another coming up, and it didn't take long to make 400 or 600 feet. One going down, one going up, takes pretty quick to get together.

Q. Give your best judgment. That is what I want.

A. Might be two minutes; might be less than that. I don't know what it was.

Q. You can't approximate that time?

A. What?

Q. You can't approximate that time?

A. We didn't take no notice; we didn't watch the time.

Q. Now, when the Henderson gave the second whistle, did you see the Samson?

A. Yes.

Q. How far was the Samson from the Henderson at that time?

A. Well, that is what you tried to ask, and that is what I say I couldn't tell. We was in the dark, and was quite a distance apart, and how far—how many feet there was is more than I know, because I was half or three-quarters of a mile away.

Q. What is your best judgment of the distance between them at that time?

A. I couldn't tell that; something a fellow don't know; no use to talk about it.

Q. Did you hear the crash between the Hender-

son and the rock barges?

A. Yes.

Q. How long was the crash after the danger signal that you have described?

A. There is another thing you know. We didn't have a watch in our hand and didn't take the time. They was pretty close together. They might be half a minute or might be more or less. We didn't pay so close attention to it.

Q. I understand you to say you also heard the anchors?

A. Yes.

Q. How long was it after—

A. Well that crash and the collision came and the anchors, they were just near the same time. Maybe a man had time to turn around if he had done it quick.

Q. It took you I understand about five minutes to go out from the towhead to the Henderson?

A. Yes.

Q. And when you got there where was the Samson?

A. The Samson was backing out, that is the scows out from the Henderson.

Q. Still backing from the Henderson with his scows?

A. Could say backing; kind of drifting down the river. Had his light on the Henderson.

Q. Had his light on the Henderson?

A. Yes.

Q. Where was the Henderson at that time?

A. They was laying bottom side up a little below that point we was speaking about.

Q. It wasn't at the same place it was the next morning?

A. Oh, no, no, no.

Q. How much was it above that?

A. Oh, it was quite a little distance, a quarter of a mile anyhow above it—more.

Q. A quarter-of-a-mile?

A. Well, probably more than that. We didn't measure that. I know where she was lying that time, and I know where she was lying the next morning. I haven't measured the distance between there.

Q. Is the point of Tenas Illihee Island above or below the towhead?

A. It is a little below.

Q. The point of Tenas Illihee is a little below the towhead?

A. Below.

Q. So you think a little north of the towhead?

A. A little north of the towhead—a straight line west. They can be a little below you see, below the tow head away and below the point; but take a straight line east and west, would be below.

Q. Would be north of the towhead?

A. Not exactly a line. On the coast, then it would be below.

Q. What I want to know is: Is the point of Tenas Illihee Island north of the towhead or south of the towhead?

A. That is west; northwest.

Q. I know it is west, but is it further north or further south than the tow head?

A. Further west than the tow head is.

Q. But further north or further south?

A. Yes, further north.

Q. Now, the Henderson, when you got there were her lights still burning?

A. I don't understand.

Q. When you got to the Henderson were her lights still burning?

A. Oh, no, no.

Q. They were not burning?

A. Couldn't burn with it bottomside up.

Q. Were any boats there when you got there?

A. A little row boat came over from the Samson; we got there the same time.

Q. You got there the same time as the row boat from the Samson?

A. Yes.

Q. Were you there at the time the Samson put the line on the Henderson?

A. Yes.

Q. Where was the Henderson at the time the Samson put the line on her?

A. He was gradually drifting down the river. I don't know exactly where he was. We didn't pay no attention to that.

Q. How long after you got there when the Samson put the line on the Henderson?

A. We only been there a little bit; people starting to get off. We had nothing to stand by for; we wasn't going to lay there. We wanted them people to get off the boat and get in our boat. We didn't know; one man was walking over and back on the side of the Henderson. I suppose he made fast that line and was pulling on it. I don't know whether pulling; hanging fast.

Q. I don't understand; what I want to know is this: Had the Samson put the line on the Henderson when you got there?

A. No, not when I got there.

Q. She did put a line on the Henderson, did she?

A. Yes.

Q. Did she pull the Henderson any where?

A. No, don't think they could pull her anywhere.

Q. Don't think she could pull her anywhere?

A. No.

Q. She tried to pull her, did she?

A. Well, he pulled on her.

Q. Which way was he trying to pull her?

A. Trying to pull her out in the channel; he backed up east.

Q. Trying to pull her towards the channel?

A. Yes.

Q. That is: Was the Samson when she put the tow on the Henderson trying to tow the Henderson northeast?

A. Well, something near east; across the river anyhow, toward Puget Island side.

Q. Toward the Puget Island side. Now, when you went over to the Henderson, did you pass above or below the Samson?

A. We passed below.

Q. Passed below the Samson?

A. Yes.

Q. Did you pass below the rock barges?

A. Yes.

Q. How many rock barges did you see at that time?

A. They were all three there then.

Q. All three?

A. Yes, one of them was a little bit further down than the others. I didn't know whether was fastened to the Samson with one line. I didn't know; we had to swing off in order to avoid that barge.

Q. Which barge was that you had to swing down to avoid?

A. I don't know which one. There was one.

Q. Do you know whether the first one you struck—the first one you got to or the last one you got to?

A. The other two were a little further up. I think they were fast to the Samson yet.

Q. Was it the first barge you got to or the last one?

A. The first one; we swung below when we saw the first and went around the west side to get to the Samson.

Q. When you saw the first one?

A. Yes.

Q. How far do you say the Samson was at that time, in your judgment, from the Henderson?

A. That time I came over there?

Q. Yes.

A. Well, it couldn't be very far; might be 50 feet. I didn't measure it.

Q. Can you see the Bugby light from the tow head?

A. Yes.

Q. Where does the range light strike the Oregon shore?

Q. The Hunting Island Range you mean?

Q. Yes, the Hunting Range light?

A. Quite a little below Bugby light.

Q. Strikes above Bugby?

A. Yes.

Q. Do they strike above or below the bluff points?

A. Goes way above the bluff, you know.

Q. Way above the bluff?

A. This way—up above it.

Q. But below Bugby light?

A. Below Bugby light, yes.

Q. How far is it from Bugby light to the bluff?

A. Well, I couldn't tell you exactly how far it is. It might be three-quarters of a mile.

Q. How far is it from Bugby light to the mouth of your slough?

A. Well, that is a little over half a mile too, but I have never measured that there. What did you say—what is it from the light to the slough or from the

bluff to the slough?

Q. From the light to the slough?

A. From the light to my slough?

Q. Yes.

A. Is that the question?

Q. Yes, from the light to your slough—Bugby light?

A. Oh, mine is three-quarters of a mile.

Q. How wide is the channel between the mouth of your slough and the bluff?

A. Well, that is a thing I haven't measured either. You can put out 325 fathoms of net and you are pretty close, shore to shore. You can figure out how far it would be.

Q. About 325 fathoms is it?

A. Yes.

Q. Now at the time you first saw these barges, rock barges, were they anchored?

A. Now, that is something I couldn't tell you. I don't think so. I think they was fast to the Samson yet. I don't know if got clear of them or not.

Q. Did you see any lights on them?

A. I didn't notice that either, but must be lights on them I suppose, but I didn't notice them lights.

Q. You didn't notice?

A. No.

Q. And you don't think they were anchored at that time?

A. No.

Q. How long did you stay over where the Hen-

derson was, then?

A. Well, we didn't take no time on that either. We stayed there long enough to get them people out of the boat and on the Samson, and was laying there a little while, and kept on looking around a little bit. I don't know how long that was. That is more than I can tell you.

Q. Then you went back to the towhead, did you?

A. No.

Q. Where did you go then?

A. We went a little up the river. We was going to lay out the net and make a drift.

Q. Went a little up the river?

A. Yes, a little up the river from where we was that time.

Q. So where the Samson was lying at the time you saw her that night was above the point where you usually put out your net?

A. No, no; they was below; we was way down, pretty near to Tenas Illihee that time, and we went up to make the drift, and the Samson he was lying there, and a little above Tenas Illihee point too.

Q. Both above Tenas Illihee point?

A. Yes.

Q. I understood you to say you went down the river to put out your net.

A. When we was laying; we went a good ways down the river to where we was laying. We went down with the tide and the tide goes about three miles an hour.

Q. You undertook to lay out your net but changed your mind?

A. We couldn't lay out. Them stone barges—we seen two of them, and then it got pretty near daylight and we seen another barge down the river and we thought they was in our road, and we went home and had breakfast and came out again.

Q. Did you go to this rock barge?

A. Went to two of them.

Q. Went to two of them?

A. Yes.

Q. Were they anchored?

A. Yes, were anchored then.

Q. Did you go to the one?

A. No.

Q. Now, when you saw them, the two were laying on which side of the range lights?

A. They was laying about 75 fathoms the Oregon side of the range.

Q. 75 fathoms the Oregon side of the ranges?

A. Yes.

Q. Did you see them the next morning when the Samson picked them up?

A. No, didn't see them the next morning. The next morning when we come out, they was gone.

Q. You didn't go to the one barge?

A. No.

Q. Don't know where that was anchored?

A. I know by sight down there; know just about where it was, but didn't go down to it.

Q. Which side of the range lights was it on?

A. That is something I couldn't say from where I was. As near as I could say he was on the Washington shore, I think.

Q. You say the Daniel Kern passed forty minutes before you saw the Henderson. Is that what I understand?

A. That is the nearest I can get at it. We didn't have a watch in our hand. That is the closest I can tell of it.

Q. Where were you when the Daniel Kern passed?

A. Waiting at the tow head.

Q. Waiting your turn?

A. Waiting my turn, yes.

Q. Anybody else on the tow head with you?

A. Yes, a number of the boys.

Q. Who was there?

A. I don't know. Charley Johnson; he was the first one to lay after the Kern went by and the next one was Eddie and the next turn was mine, and I didn't lay out. The collision came between then, and I didn't lay out at all.

Q. Now, how long does it take to lay out your net?

A. From we leave the tow head and come back take just about—ten minutes to leave, and then you lay out.

Q. Ten minutes?

A. Yes.

Q. And there were just two ahead of you?

A. Two ahead of me.

Q. Take them longer than it does you?

A. You misunderstand me there. They was ten minutes laying out and we wait for our turn, maybe fifteen or twenty minutes; we wait for that turn then we go and lay out, and it took us so long.

Q. Anybody ahead of Charley Johnson?

A. Eddie was ahead of him.

Q. Eddie was ahead of him?

A. Not ahead of him. He was next. Johnson was first and Eddie was next.

Q. And you were next?

A. Yes.

Q. Anybody ahead of Johnson?

A. I suppose some body ahead; I don't know. I can't remember in my head; there was fifteen or twenty boats.

Q. How long after the Kern passed when Johnson laid out his net?

A. He laid out just as the Kern passed.

Q. In your judgment the Samson coming down through the waters there, with the tide like that, goes about eight miles an hour. Is that right?

A. Yes.

Q. Is this seining ground you speak of above the tow head?

A. Yes.

Q. How much above it?

A. Quite a little bit above that. Three-quarters

of a mile above that.

Q. It runs up three-quarters of a mile.

A. Well, the seining ground don't reach down to the tow head and there is 80 rods—what the men use as seining ground; from the slough is 160 rods from the tow head and up to the middle of the seining ground.

Q. You don't know what anchor chains they were you heard run out, do you?

A. Oh no, we heard a chain was going; that is all we know.

Q. That is all you know, you heard the chains go out?

A. Yes.

Redirect Examination.

Questions by ERSKINE WOOD:

Mr. Grove, just one point I first want to clear up. That is, Mr. Minor asked you whether you first saw the Henderson passing the fishermen way down the river below the foot of Puget Island, and whether she was then above the range, or he may have said above the range lights.

A. That could be above. There is the Hunting Island Range, you know, is below there. That is the reason he was nearer Puget Island a good deal than the range—the reason I say above the range lights.

Q. What I want to know is: Do you mean when you first saw the Henderson, when you spoke of her passing that fisherman down the river, do you mean she was up-stream from the range lights?

A. She was upstream from the range lights.

Q. That is what I thought you meant.

A. Yes.

Q. You say the Henderson blew her first whistle when she was about opposite the tow head?

A. Yes.

Q. And you said to Mr. Minor that she was on the range, you thought when she blew her first whistle?

A. Well, he was a little bit above the towhead; he passed Eddie below and by going around him; Eddie was crossing in the range, and by going up and past him; he blew the whistle when he was on the range, yes.

Q. He might have been on the Oregon side of the range and you couldn't tell exactly?

A. Yes, I couldn't see that from me.

Q. You said that the Hunting Island Range struck the bluff or struck the shore, the Oregon shore, below the Bugby Light?

A. Yes.

Q. But way up above the bluff?

A. Yes—

Q. (Interrupting) I just want to know what you mean by bluff. Do you mean Hunt's Mill Point?

A. Mean Hunt's Mill Point when talking about the bluff, yes.

Q. Another thing I don't understand. I thought I was confused myself. Did you say that after you went over to the Henderson, you went down the river

to lay out your net?

A. No, no.

Q. Did you say that?

A. No, we went over to the Henderson. First we had to turn down the river on account of going around them stone barges; then we come back and we go to lay out.

Q. I don't understand that yet. Tell me again.

A. Do you mean as we went over to the Henderson or as we went down?

Q. I mean when you went over to the Henderson and found her there, then you didn't go down the river to lay out your net, did you?

A. We went twice over there. The first time we went over we went over to see the Henderson; that was the time we went over and had to go down the river, and go around them barges.

Q. But when you first got over there you say you thought the Samson still had a line on the port barge?

A. Well, I thought he had a line on all of them because I am not sure of one, but he had lines on two of them because he wasn't clear of them.

Q. What is that? (Answer read.) Is that right?

A. Yes.

Q. Were the barges all close together?

A. Two of them was close together, but one was hanging a little further down the river, and that is the reason I don't know whether had a line on to the Samson or not.

Q. They were all pretty close—the Samson and

her barges were pretty close together?

A. They were close together, two, and one a little further down the river. I don't know whether fast to the Samson or not.

Q. The two were close to the Samson, is that right?

A. Yes, sir.

Mr. GUTHRIE: And the Samson was backing up at that time?

A. He was backing up, yes.

Q. Now, as near as you can remember it, do you think the Samson had a line on the port barge or not? What is your best recollection of it?

A. No, I couldn't tell that.

COURT: By backing up, which direction was she backing?

A. He was backing towards the island, east.

Witness excused.

JOE OLESON, a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Oleson, what is your business?

A. Engineer. Marine engineer.

Q. Where are you working now?

A. Kellogg Transportation Company, on the Cowlitz.

Q. On the Cowlitz, you say?

A. River.

Q. You were on the Henderson the night of this collision?

A. Yes.

Q. In what capacity?

A. Assistant engineer.

Q. Were you on watch?

A. Yes, sir.

Q. How long had you been on watch?

A. Oh, about 40 minutes, I should judge; three-quarters of an hour or something.

Q. What time did you go on watch?

A. One o'clock.

Q. Did you hear the whistles of the oil barge prior to the collision?

A. I didn't pay no attention to them. I don't remember hearing them.

Q. Well, what bells did you get just prior to the collision?

A. I got one bell to stop and got a reverse bell and full speed astern.

Q. How did those follow each other?

A. Just as quick as they could be given.

Q. Indicating that the intention of the pilot was to back her just as quickly as you could?

A. Yes, sir.

Q. Did you get any more bells after that? First, I will ask you whether you obeyed that order.

A. Yes.

Q. How long do you think you backed her?

A. Oh, probably less than a minute.

Q. What bells, if any, did you get after that?

A. I got a stop bell after that, and then go ahead, and then I got another back up bell.

Q. How long were you going ahead?

A. Not very long; I couldn't say. Just a very short time.

Q. How were the engines working after you got that bell to go ahead?

A. Why, they wasn't working very good.

Q. What?

A. Steam had started to go down you know.

Q. Why was that?

A. The collision had broke off the blow-off pipe on the boiler and other pipes alongside, and the steam started to go down.

Q. Do you know whether the water was going into the fire-hold or not?

A. I couldn't tell from where I was.

Q. Now, I have left you going ahead. Did you get any signals after that?

A. I got one to stop.

Q. Then what?

A. Another one to stop, reverse and back again.

Q. Did you obey them?

A. Yes, sir.

Q. Did you have any power at that time?

A. Not very much. Just barely would back; didn't amount to anything.

Q. What was the condition of the boat?

A. About that time the water started to come in

the engine room, and I looked at the steam gauge and it was about six pounds of steam, is all.

Q. How deep was the water in the engine room?

A. When I left about a-foot-and-a-half, I judge.

Q. You were standing in about a-foot-and-a-half of water when you left?

A. Yes.

Q. How long do you think that was after the collision?

A. Probably two minutes.

Q. All those bells, then, followed each other very rapidly?

A. Very rapidly, yes.

Q. Could you tell whether the Henderson was torn loose by the collision?

A. Yes, I could tell by the way she was kind of tipping and swinging.

Q. Torn loose immediately by the collision?

A. Yes.

Q. Could you see either shore at that time?

A. No, I couldn't see. I couldn't tell nothing about it.

Q. Just tell what happened after the collision; what the Henderson did, and how you got off her.

A. Well, after the water came in the engine room that deep—it all came in just at once it seemed like—I left; I went up the after stairway and went to my room; thought I would get my life preserver, but when I was up there, she was full of water up there, and I had to get off there, and run to the hurricane

deck; the mate wanted me to loosen the life boat, but as I got there on top—

Q. When you got to the hurricane deck, did you notice any shore?

A. No, I didn't pay any attention to the shore. And I slid in the water, and he did, I guess.

Q. You slid in the water from the hurricane deck?

A. Yes.

Q. Was she tipped that far?

A. Yes, when she dove I went in.

Q. Which side?

A. Starboard.

Q. She tipped starboard, and you slid in the water?

A. Yes.

Q. Then what did you do?

A. I came up, caught on something, climbed around on the hull.

Q. Which way did the Henderson drift?

A. I couldn't tell that.

Q. Did you see the Samson?

A. Yes. Seen the Samson kind of towards the right. Towards the—I should judge towards the Washington shore, I seen her.

Q. How far away was she?

A. Not very far.

Q. Now, I will ask you what time could you see her?

A. That was after the boat was tipped over.

Q. After you were out on the bottom of the boat?

A. Yes.

Q. She was over towards the Puget Island shore. How far?

A. Just a little ways from the Henderson. I couldn't tell.

Q. See her barges?

A. Yes, could see them, but couldn't tell about where they were.

Q. Were they close to her?

A. Not very far, didn't look when I seen her.

Q. Do you know whether they were lashed to her or not?

A. No, I couldn't tell.

Q. Couldn't tell?

A. No.

Mr. MINOR: How long do you think it was after the collision before the Henderson sunk?

A. About three minutes.

Witness excused.

OLE GROVE recalled by the Libelant.

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Grove, at this time of the year, July 22, 1911, what stage of water is that in relation to the June freshet?

A. It was going down a little at that time.

Q. Was that towards the end of the June freshet?

A. Yes, starting to go down, yes.

Q. The water was still high.

A. Yes, still high, yes.

Cross Examination.

Questions by Mr. MINOR:

The June freshet in 1911 was a very small freshet, wasn't it?

A. Yes, wasn't very big.

Q. It went down very quickly?

A. Went down pretty fast, yes.

Q. At that point down there, Mr. Grove, the freshet doesn't make much difference, does it?

A. Oh, they make some.

Q. Don't raise the water on the bank at all, does it?

A. Yes, makes a couple or three feet, yes.

Q. Sometimes two or three feet?

A. Yes, sir.

Q. So a freshet up here of 20-feet or so, down there is two or three feet?

A. Yes, about what is down there. Well, if 20-feet up here, you might have 3½ down there on the average, and might be tide, you know. The tide raises down there.

Q. I understand, but when the tide is high, you don't observe the freshet at all, do you?

A. Yes, some. About three feet, a little more; more or less.

Q. Three feet or more.

Mr. ERSKINE WOOD: When the tide is full flood at that stage of the water, the way it was that night, is there any current upstream?

A. No, there was too much freshet for that.

Q. You say when the tide is full there is no current. No tide anywhere, where it is full?

A. Yes, partly; the tide is some.

Q. I say, when the tide is full no current there.

A. I don't know what you mean by full.

Q. That is what I want to know.

Mr. ERSKINE WOOD: When the tide is high—high tide.

A. The current goes down the river, just the same.

Q. When the tide is coming up, the current goes down the river just the same?

A. Yes.

Q. The tide doesn't affect the current at that point at all?

A. Not when that much freshet in the river, don't affect; they go down the little slough.

Q. At the time this accident took place, the 22nd day of July, 1911, did the tide affect the current in the river at all?

A. Affected a little bit; got slack of tide, we call.

Q. Didn't affect it much to speak of?

A. No.

Mr. ERSKINE WOOD: Explain what you mean by tide slacking the current.

A. The tide backing up the water and it gets slacker that far down the river.

Mr. ERSKINE WOOD: Did affect it that much?

A. Did affect as went down.

Mr. ERSKINE WOOD: And after the tide ends, the current runs faster again?

A. So much faster again.

Witness Excused.

HENRY F. STAYTON a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by ERSKINE WOOD:

Mr. Stayton, how old are you?

A. Twenty-six.

Q. What is your business?

A. Steam-boating.

Q. What is your duty, as a steamboat man?

A. Pilot.

Q. Speak louder?

A. Pilot.

Q. Are you piloting now?

A. Yes, sir.

Q. How long have you been piloting?

A. About four years.

Q. Were you on the Henderson on the night of this collision—the morning of July 22, 1911?

A. Yes, sir.

Q. Where were you on the Henderson?

A. Pilot house.

Q. What was your duty? What capacity were you serving in?

A. Acting as pilot under the charge of Captain Sullivan.

Q. Pilot on the Henderson?

A. Yes, sir.

Q. Were you steering or handling your ship at all?

A. No, sir. I was acting under orders from Captain Sullivan.

Q. Speak up louder.

A. I was acting under orders from Captain Sullivan.

Q. How was the helm of the Henderson kept?

A. Midships.

Q. Unless he gave an order.

A. Unless he gave orders.

Q. What time did you go on watch?

A. What was the question.

Q. What time did you go on watch?

A. About 1:20 by the pilot-house clock when I went in the pilot-house.

Mr. SNOW: One-twenty by what?

A. By the pilot-house clock when I went in the pilot-house.

Q. You must learn to speak up loud, so we can all hear.

Mr. SNOW: The acoustics of this building are very bad.

Q. About where were you in the river when you came on watch?

A. Well, we were on Hunting Island Range lights, somewhere about abreast of lower Puget Island.

COURT: Abreast the point of Puget Island.

A. About somewhere abreast the point of Puget Island. I couldn't tell exactly. It was in the shadow

of the bank.

Q. The lower point of Puget Island?

A. Yes.

Q. Was the Samson in view then?

A. No, sir.

Q. When you first came on watch?

A. No, sir.

Q. When did she come in view?

A. Well, shortly afterwards.

Q. Shortly after you went on watch?

A. Yes, sir.

Q. Can you just guess or approximate how far up the river you were when she came in sight?

A. Well, I couldn't tell exactly, only being on the range lights and then I couldn't tell the exact point.

Q. None of this is exact.

A. Being up and down the river, I couldn't tell exactly.

Q. Well, about how far above the point of Puget Island had you got when she came in sight?

A. Well, between that sand bar and the point of the island, I should judge; somewhere along there.

Q. I thought you said you were abreast the point of the island when you went on watch.

A. That is what I mean, when I went on watch.

Q. I say where were you when you saw the Samson?

A. Probably was about—probably 600 feet past the point of the island.

Q. Describe the course that you took from that

time on.

A. I didn't notice the exact movement of the vessel until I noticed her swinging off the starboard, and at that time I noticed she was swinging off the range lights, and I kept watching closely, and we swung below the range lights and opened them up fairly well; at that time we seemed to steer a course which kept the range lights open to a certain extent, or actually might say, opened up a little more at the point of collision.

Q. What range lights do you mean?

A. Hunting Island Range lights.

Q. Did you have any apprehension that you were getting over too far where the water was shallow, or not?

A. Yes. I didn't know at that time the exact location of that bar at the head of the Tenas Illihee Island, and kind of thought it would be pretty shallow over there for deep draft vessels; thought would probably run aground.

Q. You thought Sullivan was going pretty far over.

A. Yes, I didn't know the exact location of that bar. Knew it was shoal over there; didn't know the exact location of that bar—for a vessel of that draft.

Q. Then what was your course?

A. Well, after we swung there and got pretty well over, the range lights opened up pretty well, we steered a course along about parallel with the range lights, or opening them up a little more, might say.

Q. About what point on the shore would you be headed for—just about?

A. Somewheres up in the bluff; towards the lower end of the bluff, I should say.

Q. Did you hear the whistles given from the steamers?

A. Yes, sir.

Q. What whistles did you hear?

A. Well, one whistle given from the oil barge; the Samson answered immediately and shortly afterwards a—

Q. (Interrupting) what did she answer with?

A. One whistle. Shortly afterwards the oil barge gave another whistle. I don't remember hearing an answer to that.

Q. Had you pulled off to the starboard side of the range when the oil barge blew the first whistle?

A. Yes, we were on the starboard side of the range at that time.

Q. When did you notice the range lights opening? Did you notice them more than once?

A. Yes, sir. I noticed them all the time from the time that we opened up the range lights to the point of the collision, off and on. Noticed them pretty regularly.

Q. Have you any idea how far apart the two boats were when the first whistle was given?

A. Well, somewhere close to half-a-mile.

Q. How far apart do you think they would be when the second whistle was given?

A. Five or six hundred feet.

Q. Five or six hundred feet?

A. Yes, sir.

Q. What was the course of the Samson as you observed it from her lights, we will say from the time you first saw her?

A. As I first saw the Samson coming around the point of Puget Island, I saw her green lights and her two mast-head lights, and the light on the starboard barge, at least I thought it was on the starboard barge—white light.

Q. Did you see the red light after that?

A. Yes, shortly after that I seen the red light.

Q. Now just go ahead. First you saw the green light and very shortly after you saw the red light?

A. Yes, sir.

Q. And did the green light keep in view or shut out?

A. Remained in view up to the accident.

Q. After you saw the red light then you saw both lights?

A. Yes, sir.

Q. Both side lights Did they remain in view from that time on or not?

A. Yes, they remained in view up to the time of the accident.

Q. Tell about this order you got from Captain Sullivan to put your helm hard aport and back.

A. That was shortly after the second whistle had been given.. He gave me orders to stop, port and

back, which I immediately did.

Q. Where was the Samson at that time with relation to the bow of the oil barge?

A. She was pretty close; well, pretty well abreast of the oil barge at that time. The bow of the rock barge was—

Q. (Interrupting) The bow of the rock barge would be.—

A. About abreast of the bow of the oil barge. Some wheres in there, I should judge.

Q. Did you obey this order?

A. Yes, sir.

Q. Immediately?

A. Yes, sir.

Q. When you got that order, we will say, did you notice the point of the shore towards which your barge was heading?

A. Not much more than I could see we were heading into the bluff—towards the bank.

Q. You could see the bank plainly, could you?

A. Yes, sir.

Q. About how far away do you think it would be?

A. Couldn't see the bank exactly plainly, but I could see it from the shadows of the bluff—top of the bluff.

Q. You mean you couldn't see the water line or shore line?

A. No, because it was in the shadow of the bluff.

Q. How did the Samson and her rock barges appear to you to strike the Henderson?

A. Why the port rock barge struck the Henderson on the port bow about the corner of the deck house.

Q. About how far abaft the stem would that be?

A. About 35 feet I guess.

Q. The corner of the house would be 35 feet abaft the stem.

A. The stem of the Henderson?

Q. The stem of the Henderson.

A. Yes, sir.

Q. Did you see any barge strike the oil barge?

A. No, sir.

Q. Could you have seen it if it had struck there, do you think?

A. Yes, sir.

Q. If it had struck there, that would have been right in front of you, would it?

A. Yes, sir, I could have seen it if it had struck.

Q. How far do you think it was from the stem of the Henderson to the oil barge—to the side of the oil barge?

A. About fifteen feet.

Q. Do you know the beam of these rock barges?

A. No, sir.

Q. If the beam of these rock barges is 37 or 38 feet, do you think it would have been possible for the port rock barge to have hit the side of the Henderson—the side of the oil barge and have slid on down and been struck by the stem of the Henderson, so as to make a dent in the starboard side of the bow of the port rock barge?

A. No, sir.

Whereupon proceedings herein adjourned until 1:30.

Thursday, January 9, 1913, 1:30 p. m.

HENRY F. STAYTON resumes the stand.

Direct Examination continued.

Questions by ERSKINE WOOD:

Mr. Stayton, did you give any danger whistles that night?

A. Yes, sir, just prior to the accident.

Q. What do you mean by just prior to the accident?

A. Just before.

Q. But about how long? Give an idea. Just preceding, or some minutes or what?

A. Well just—almost instantly—just two or three seconds before the crash.

Q. And what is your danger signal?

A. Several short and rapid blasts, not less than four.

Q. Did you blow any other whistles to wake up the crew or not?

A. Blew the donkey whistle after we blew the danger signal, to wake up the crew.

Q. What was the purpose of your blowing the danger signal? To warn the Samson, or to wake up the crew or both?

A. Well, it was used for both purposes, and to notify Captain Sullivan that we were going to be struck by the Samson and couldn't assist him any

more.

COURT: You will have to speak louder.

Q. State about your waking up Captain Stimson.

A. Well, about the time or a little after the second whistle was blown, it appeared to me there was going to be trouble, so I kicked on the wall of the pilot-house—after side of the pilot-house, to wake up the captain so as to be there in time to see the accident.

Q. Where was the captain sleeping?

A. Just aft the pilot-house.

Q. In a room adjoining?

A. Yes, what they call the texas, just aft the pilot-house.

Q. What kind of a partition between the pilot-house and the room where he was.

A. Just a thin partition made out of $\frac{3}{4}$ " stuff.

Q. And you kicked on that to wake him up?

A. Yes, sir; the floor was made about three or four feet below the roof the room.

Q. Did you succeed in waking him up?

A. Not just at that time. He was a little sleepy. He didn't come out until I blew the danger signal.

Q. That is when he came in the pilot-house?

A. No, he came in about the time of the crash. He went out on deck as soon as I blew the danger signal.

Q. What did you do when he came in the pilot-house? Did you stay there or go out?

A. I went out; went below.

Q. Just to get this straight: You gave this back-

ing bell in compliance with Captain Sullivan's order. Is that right?

A. Yes, sir.

Q. And then did Captain Stimson come in after that or before that or when?

A. He came in after I had been backing.

Q. After you gave the backing bell?

A. After I got her to back.

Q. Before you turned the wheel over to him?

A. Yes, sir.

Q. Where is Captain Stimson?

A. He got killed in the explosion of the Sarah Dixon boiler..

Q. Just describe briefly the tow lines that lashed the Henderson to the barge. Just call them over and tell what kind they are.

A. They have a one inch wire tow line. Tell where they are made fast?

Q. Yes. Take them up in order. I will ask you to describe the head line.

A. The head line is a seven inch line with a 7-8" wire pendant.

Q. And where does that lead from on the Henderson, and where to on the barge?

A. Leads from the bow of the Henderson up forward on the oil barge, close to the bow, in through a hawser-pipe, on the port bow of the oil barge.

Q. Now, when you say a seven-inch line, what do you mean by that—diameter or circumference?

A. Circumference.

Q. Is that a manila line or a wire line?

A. Manila line.

Q. With a wire pendant on the end of it. What is the pendant for?

A. The pendant is the end of the line; it is not necessary to have it all line; in a boat we use rope mostly in order to take around the bit or capstain; wire line kinks so easy. That is why we use a rope line.

Q. What is the purpose of the head line?

A. For backing up; back up, to hold your tow—back up—pull it back.

Q. Now, describe the breast lines.

A. We had two breast lines, $\frac{3}{4}$ " wire cable.

Q. Where do they lead from, and where to?

A. They lead from the bits straight into the oil barge.

Q. From the bits on the bow of the Henderson?

A. On the bow of the Henderson, straight in and made fast to the oil barge.

Q. Straight across from the bow of the oil barge. What are they for?

A. They are to keep the boat over steady. To keep her from swinging back and forth.

Q. Tell about your tow line.

A. The tow line was an inch wire cable made fast on the towing kevel, starboard bow, pretty well forward.

Q. The starboard bow of the Henderson?

A. Yes, sir.

Q. And leading to where on the barge?

A. Aft on the oil barge?

Q. Aft on the oil barge?

A. Yes, sir.

Q. What stern lines are out?

A. We had two stern lines out, the same size as the head line.

Q. The same size as the head line?

A. Yes, sir.

Q. Lead from the stern of the Henderson around the stern of the oil barge, is that it.

A. Lead from the gangway door across the stern of the oil ship, the starboard side.

Q. What are they for?

A. They were to hold her stern from swinging around.

Q. Hold what stern from swinging around?

A. Hold the stern of the Henderson from swinging.

Q. Hold the sterns of the two ships together?

A. Hold her close up together; hold her steady.

Q. Were those lines broken by the force of the collision?

A. Yes, sir.

Q. How many of them?

A. All of them.

Questions by C. E. S. WOOD:

I will ask a question at the suggestion of Mr. Snow. Who gave orders to blow the danger signals, or did you blow them on your own accord?

A. Blew them on my own accord.

Q. I hand you wooden model, prepared by and the property of the other side, which I understand is supposed to be drawn to scale, of the oil barge. But, using it just as a model, I wish you would—using it just as a convenience, I will ask you to put it down on this paper and make a drawing around it, representing the oil barge. (Witness does so.) I now hand you another model prepared by the other side—I am only saying that to identify it.

Mr. MINOR: I don't know anything about those.

Q. (Continuing) A wooden model, and ask you to put that down in relation to this diagram of the oil barge, in the position in which the two boats were lashed together for towing. I want you to make a diagram with these, in the towing position.

Mr. SNOW: What model is that?

Q. That purports to be—this wooden model purports to be the Henderson.

A. I don't know as I can put them exact. Maybe a few feet this way or that way, or do you want them exact?

Q. As near as you can put, is all. They are supposed, I understand, to be drawn to scale; so I understand. We will assume they are. You can just look at the two, put them together on the surface, before you draw it if you want to experiment with them.

A. If the measurements are there, I want to be looking for that.

Q. Put this Henderson model not only in relation to the fore and aft line of the barge but also in

relation to any angle that she had in being fixed to the barge. There has been some testimony that they were put together with her nose slightly in to the side of the barge. Try to get the real position, as well as you can, (witness places models.) Now, are they as nearly parallel in their lines as you have them? I want to call your attention to that point.

A. Very nearly.

Q. Do they lash them with their lines as nearly parallel as they are here, or more of an angle?

A. A little angle on there.

Q. Well, then make what you think is right. (Witness arranges models.) All right, go ahead then, if you think you have it. (Witness draws.) Now, I wish you would locate those lines as they ran from one to the other. You might first, if you will, state something about—

A. I don't catch your meaning about the lines.

Q. Wait until we get to that. You said something about the lines going through a gangway or house opening or something of that kind. Was that the Henderson or the oil barge? Do you understand me? I understood you to say in your examination something about the lines going from one to another through a gangway or through—

A. (Interrupting) That is through her after gangway door.

Q. You better locate that, as well as you can, then first.

A. It is a little after the stern of the ship, a trifle

bit. Some wheres right in there. Draw a line across where the stern line leads to?

Q. How much of a gangway was that? A few feet?

A. The gangway; forward side about even with the stern of the ship.

Q. Now, locate the lines, all of them. Just take your own plan of it. (Witness draws.) Now what is that line you just drew?

A. That is the stern line.

Q. A-B is the stern line.

A. There was two lines there that had the same lead.

Q. Two stern lines?

A. Yes, sir.

Q. Same lead as A-B?

A. Yes, sir.

Q. Now, put on any other lines taking your own way to do it. That will be the center of the boat. (indicating).

A. I had better make a capstan here first; have the capstan sit here on the bow. This is the chock on this side; the flagstaff you might say, on the nosing.

Q. The chock on the starboard side of the flagstaff?

A. Yes, sir.

Q. And the flagstaff arises from the stem?

A. Yes, sir, midships. I guess I got that up a little further than necessary; not quite that far; this is in direct to the capstan.

Q. You say the line C-D, at this forward end the oil barge is a little too near the bow; a little further up than it should be.

A. A trifle bit, I should judge.

Q. Now what is the name of that?

A. That is the head line.

Q. Just one, is it?

A. Yes, sir.

Q. One head line—C-D.

A. (Drawing) That is the tow line—a kevel there, to make fast to.

Q. The spot marked “kevil” is the kevel and the line E-F is the tow line. Is that what you mean?

A. Yes, that is correct.

Q. Now, anything else?

A. Yes. We have two breast lines from the bits. This line leads right across underneath the bits; that line. There are two of those.

Q. And the line G-H is the two breast lines. Is that right—across there?

A. Yes, two of them.

Q. Is that all the lines?

A. That is all. Six of them.

Mr. C. E. S. WOOD: I offer this diagram in evidence.

Marked Libellant's Exhibit 6.

Cross Examination.

Questions by Mr. MINOR:

Q. What time did you come on duty?

A. One twenty by the pilot-house clock.

Q. What time did the collision take place?

A. About one-forty I believe.

Q. Did you look at the time then?

A. No, sir, not just at that moment. I wasn't—I left the pilot-house right away after the collision occurred.

Q. But you were in the pilot-house when the collision occurred?

A. I was, yes.

Q. And you didn't look at the time?

A. Not when it occurred, no, sir.

Q. Did you look at the time afterwards?

A. No, sir.

Q. Where were you at the time that you went on duty?

A. I was off from the lower end of Puget Island; a little below that probably. I couldn't tell the exact spot. Couldn't see on the shore any one object to tell exactly where I was. I know it was the lower end of Puget Island. Close down there.

Q. How long after you went on duty before you saw the Samson's lights?

A. Probably three or four minutes.

Q. Where did you see the lights?

A. I seen the Samson's lights coming around the point of Puget Island.

Q. What lights did you see?

A. I seen the two masthead lights, the starboard light, or her green light, you might say, and the light

on the starboard barge.

Q. How long after that before you saw the red light of the Samson?

A. Well, just a short time.

Q. Well, how long?

A. I don't know as I could tell exactly; probably a couple of minutes—probably half a minute.

Q. Did you notice the range lights when you went on duty?

A. Yes, sir.

Q. Where were you with reference to those lights?

A. We were on the range lights at the time I went on watch.

Q. How long after you went on duty before the first whistle was blown by the barge?

A. Must have been somewhere around fifteen minutes.

Q. Fifteen minutes. How long after that was blown before you heard it answered?

A. Answered immediately.

Q. You couldn't tell the time but it was a prompt answer.

A. I couldn't tell just the exact seconds, no. It was answered immediately. After the oil barge blew her whistle, the Samson answered immediately.

Q. Where was Captain Sullivan when the first whistle was blown?

A. He was on the forecandle head of the oil barge.

Q. Could you see him?

A. No, sir.

Q. Why?

A. Dark.

Q. How far was it from where you were to the point where he was?

A. About 180 feet—190.

Q. How long after the first whistle was blown before the barge sounded the second whistle?

A. Oh, somewheres around three minutes, I guess.

Q. Three minutes?

A. Yes.

Q. Did you hear any whistle answer?

A. No, sir, I couldn't say I did.

Q. Did you take any notice to see whether it was answered or not?

A. Well, I think I would have heard it if it had been answered.

Q. Were you listening for it, do you know?

A. I was, just immediately after he blew the whistle on the oil barge.

Q. Now, how long after that before you got any order from Captain Sullivan—that is after the second whistle?

A. Well, probably twenty seconds.

Q. Twenty seconds. What order did you get then?

A. Twenty seconds or half a minute. I got orders to stop, port and back.

Q. How long was it after that order before the collision?

A. Pretty close to a minute.

Q. Did you see any rock barges strike the Henderson?

A. Well, I could see right within a few feet of where they hit.

Q. Did you see any of them hit the Henderson?

A. I couldn't see the exact spot but I could see within ten feet. Could judge from my appearance, where I was standing where they would hit.

Q. How many of those barges hit the Henderson?

A. Port barge. One.

Q. Only one?

A. That is all I seen.

Q. Did the center barge hit the Henderson?

A. I don't exactly know whether it did or not. I wasn't watching that at that time.

Q. From what you saw of the location of the barges as they approached the Henderson, in your judgment did the center barge hit the Henderson?

A. I think it would.

Q. Where would that hit the Henderson?

A. The center barge, I should think, would hit the Henderson—well, I didn't notice. I wasn't watching at that time. The port barge hit; after it hit, it looked as if the captain was coming and I went below as soon as he got there.

COURT: You didn't answer the question. He asked where the center barge would hit the Henderson.

A. From appearances the way it was coming from

where I was standing, it would hit farther aft from where the port barge hit.

Q. Did you see either of the barges hit the oil barge?

Q. How is that question again?

Question read.

A. No, sir.

Q. Do you know whether either of them did hit the oil barge or not?

A. I didn't get that question.

Question read.

A. No, sir.

Mr. ERSKINE WOOD: Does he mean he doesn't know or it didn't?

Mr. MINOR: No, he doesn't know I guess. I asked him if he knew. He has answered the question.

Q. Did the rock barges go into the Henderson on a straight line or on an angle?

A. On kind of an angle.

Q. How much of an angle do you think it was?

A. Well, I couldn't say that.

Q. Take this piece of paper and make a mark showing about what the angle was, in your judgment. You have a ruler, have you?

A. Yes. (Witness illustrates on Exhibit 6.)

Q. Which of these lines represents the Henderson and which the rock barge?

A. I got that line a little too far out there; something more like that.

Q. Which is the Henderson line and which is the

rock barge line?

A. This is the Henderson. (Indicating.)

Q. Mark which is the Henderson. You mark which the Henderson is.

A. This is the Henderson.

Q. Put a mark at both ends of it.

A. "a-a" is the Henderson and this is the Samson here—the rock barge.

Q. Put that B-B. B-B is the rock barge and A-A is the Henderson. From the time that you saw all the lights of the Samson, which I understand was about two minutes after you first saw her, did you see all her lights from that time on until the collision?

A. I don't think I said it was two minutes after I first saw the Samson until I saw all her lights.

Q. How long was it then? I understood you to say that.

A. A very short time afterwards; about half a minute, I believe.

Q. In about half a minute, you think you saw all the lights of the Samson?

A. Yes.

Q. From that time on until the time of the collision, did you see both the red and green lights of the Samson?

A. Yes, saw all the lights then with the exception of the light on the port rock barge. Don't remember seeing that. All the rest of the lights I saw to the time of the accident.

Q. All the rest you saw to the time of the acci-

dent?

A. Yes, sir.

Q. On what helm were you running, do you know?

A. I had a midships helm on the Henderson unless I got orders to change it otherwise from Captain Sullivan.

Q. And do you know what helm there was on the barge?

Mr. ERSKINE WOOD: At what time?

A. They were doing the steering from the oil barge and I know nothing about what helm they had under there.

Q. Did the oil barge cross the range lights at a sharp or an obtuse angle—right angle or short angle, or how?

A. Well, fairly sharp.

Q. It wasn't running then on much of a port helm, in your judgment?

A. Yes, she swung her helm pretty well over from where she went over.

COURT: By sharp angle, do you mean short angle?

A. Went across the channel fairly quick to the starboard side.

Q. You say she swung over on a heavy port helm?

A. Well, fairly heavy, yes.

Q. And how long did she run on that helm?

A. Well, she swung over until she got the range lights well open up, and then she steadied it and run

kind of parallel line with the range line.

Q. Parallel with the range line. How long did she run on that port helm before she steadied?

A. Well, I don't know just how long that was. Wasn't very long on that,

Q. Well, give your best judgment.

A. From the time I seen her swing—start to swing until got steadied up, I guess a couple of minutes.

Q. A couple of minutes, you think. Was she on that helm at the time she blew the first whistle?

A. I didn't understand that question.

Q. Was she running on that helm at the time she blew the first whistle?

A. No, sir, running steady helm.

Q. At the time she blew the first whistle?

A. Yes, on pretty steady helm.

Q. How far below the range of lights do you think she ran before she went on steady helm?

A. Well, I couldn't say exactly how far above the range line it would be. I know the lights were opened up fairly well. Could see between the lights.

Q. But your best judgment as to that.

A. Well, I can't give you a very good estimate on how far down we was. I don't know just exactly how far the range lights are apart. I should judge somewhere about 400 feet.

Q. 400 feet?

A. Yes.

Q. After she got down there, she ran on a line,

as I understand it, parallel with the range lights?

A. Yes; we probably run off from 350 to 400 feet below the range line.

Q. And she continued on that line you think until the second whistle?

A. Yes, sir.

Q. Did she change her course after the second whistle was given?

A. I noticed swinging a little to starboard.

Q. She swung to starboard after the second whistle was given?

A. Yes. Started to swing to starboard, and I didn't pay much attention to her after that, after seen swinging to starboard and seen about to be a collision; didn't pay much attention to how swinging then. I know swinging to starboard.

Q. After she gave the second whistle, she swung to starboard?

A. Yes. Second whistle started to swing to starboard.

Q. Was she swinging rapidly to starboard then or only a small helm?

A. I seen going to be trouble, and after I seen started to swing to starboard, I didn't notice her much after that. Had several other things to do about that time. Of course I noticed swinging to starboard.

Q. When the second whistle sounded, you saw there was going to be trouble, did you?

A. Yes, sir.

Q. No question in your mind about it?

A. No, sir.

Q. How long did you say after the second whistle was blown before you gave the danger signal?

A. How long after the second whistle?

Q. Yes.

A. Oh, let's see. Probably a minute and a half.

Q. A minute and a half?

A. Two minutes. I don't know.

Q. You didn't change your helm at that time?

A. Not until I got those orders to change.

Q. I say you didn't get any orders to give the danger signal. You did that, you say, of your own volition.

A. No, I didn't get no orders to change.

Q. And you didn't change your helm when you gave the danger signal?

A. No. I had got orders before that to stop, port and back. That was before I gave the danger signal.

Q. Oh, you were backing when you gave the danger signal?

A. Yes, sir.

Q. How long after the second whistle before you got the order to stop, port and back?

A. After which whistle?

Q. After the second whistle.

A. About twenty seconds, I guess; thirty seconds.

Q. Twenty or thirty seconds?

A. About 20 seconds, I guess.

Q. And you backed how long?

A. About a minute, as near as I can tell.

Q. Now, after the collision what did you do?

A. Well, the captain came up just as they struck. He came up and I went below.

COURT: I can't hear you.

A. I say the captain came up just as they struck and I went below to see what damage was done.

Q. Do you know whether the Henderson continued to back after the collision or not?

A. I didn't understand the question.

'Question read.

A. Well, I don't know what she done after I left, but she couldn't have backed very long after I left the pilot-house. I went out the pilot-house and down the ladder on the port side and down the stairway to the lower deck; so much steam blowing there, and aft that stairway and down to the firebox. I stepped in water on the deck at that time; was just flush on deck at that time, but I went back and up the after stairway and I went around the starboard side to the cooks—told them to get up, we was sinking. Started to go to Captain Anderson's room; seen him come out the room, and run back and didn't have time to go around. By that time the water was up pretty well on the house, so I jumped up on the upper deck and leaned against a davit; Captain Anderson shoved the girls up to me; as soon as we got them up, we started across the deck. I couldn't hardly get across the deck, she tipped over so much. If had had a little further to go, couldn't have made it.

Q. You don't know whether she continued backing after the collision or not. Is that correct?

A. No, sir. I know she couldn't have backed very long.

Q. How far were you, in your judgment, from the range lights at the time the collision took place?

A. How far? They was open; off the range line.

Q. About how far do you think you were in a direct line from the range lights?

C. E. S. WOOD: Do you mean the lights or the range?

Q. From the range of lights.

A. From the island you mean?

Q. No. You know where the range lights strike across there.

A. I know where the range line is too.

Q. How far were you from that range line in your judgment in a straight line at the time of the collision?

A. Oh, about 600 feet I guess.

Q. 600 feet. Opposite what point off Puget Island were you at the time the collision took place?

A. I can't say exactly no more than to the range line—where the ranges point through there—the lights on the bank.

Q. You don't know how far you were up and down the island at the time the collision took place, and you have no point on the island at which you can look—which you can locate as being opposite the point of the collision, have you?

A. I know well up into the bluff.

Q. I am speaking about the island now.

A. No, I don't exactly have any marks on the island—what part it was.

Q. Now, you testified before on the trial of Charles Jordan, didn't you—before the Inspectors?

A. Yes.

Q. You remember that occasion? About the second or third of August—something like that?

A. Yes, sir.

Q. Didn't you testify, in answer to a question put to you by Captain Edwards, as follows: "Q. And how long after you came on watch did you see any lights from an approaching steamer? A. Well, it was about a couple of minutes, I guess, after I got up there I seen the Samson's lights coming around the corner of Puget Island." Did you so testify?

A. Yes, I remember that.

Q. Is that correct now, or is what you say now correct?

A. What I say now is correct as near as I can.

Q. Now, you say about four or five minutes, don't you?

A. Yes, sir.

Q. And you said at that time, when the matter was fresh in your mind, about two minutes?

A. Yes, sir.

Q. Now you think it was about four or five minutes?

A. Yes, sir.

Q. I will ask you whether on that examination, in answer to a question addressed to you by Captain Edwards, I think, you didn't testify as follows: "Now, could you show on there approximately about the point of the river where the accident took place, that is, about where the conflict was when they jammed one another? Now, this is the bluff where the barge was anchored; this is the range light across here; here is Bugby up here; this is Puget Island, and this is Clifton Slough, this is Prairie Channel. A. Yes, I can tell right below the seining ground you will find a slough; below the seining ground there is some piling there, as near as I could tell. Q. That is on the Puget Island side? A. Yes, sir. Q. And the accident took place around here somewhere (indicating)? A. That is where they hit, I mean, up abreast of the seining ground. There is a little slough runs in there with some piling at the end of it." Did you so testify at that time?

A. Yes, sir.

Q. Then at that time you were able to identify some point on the Puget Island shore which was opposite the point of collision?

A. From the indications, where the barge lay the next morning. I should judge that was the location.

Q. You just judge that by where what barge lay the next morning?

A. The oil barge.

Q. You just judge it from where the oil barge lay?

A. Yes, sir.

Q. Not from anything else?

A. It was close abreast of that slough. I had no way of telling exactly how far up and down the river it was.

Q. I will ask you whether or not upon this same examination you didn't testify as follows, I think in answer to questions addressed to you by Captain Edwards: "Q. And how long after you blew the first whistle did you hear another whistle blown? A. I should judge it was a minute and a half. Q. A minute and a half, and then you heard another whistle blown from barge 93? A. Yes, sir." Did you so testify at that time?

A. Well, I did, yes, but I just gave an approximation at that time and distance. I couldn't give exactly.

Q. Now you say the time you think was three minutes. Is that correct?

A. About that, yes, I think.

Q. Then at that time you thought it was a minute and a half.

A. Yes.

Q. Now, which is correct do you think?

A. I think about three minutes.

Q. About three minutes. You think you were in error then when you estimated it before?

A. Yes, sir. I didn't testify to that as a fact. I just said approximately that; as near as I could judge.

Q. I will ask you whether or not on the same occasion when you testified before the Inspectors, you

didn't testify as follows: "Q. I know, but the Island side is in Washington. You can speak of it as the Island side. This is Puget Island on the Washington side. A. Yes, sir. Q. Then as near as you can tell it, the accident took place in around that little swale, that little slough there, did it? A. Yes, sir, there was some piling right at the end of it. Q. Right in here? A. Yes, sir, and a little above the swale. Q. A little, if anything, above the swale. Would it be around about where that mark is there, do you think? A. Well, I don't know whether it would be that high or not. I don't remember now whether the piling was right in the slough or not." Did you so testify?

A. Testify to that you mean?

Q. Yes.

A. Yes. A little more there too, isn't there?

Q. What is that?

A. Yes, I testified to that.

Q. Now, was that testimony correct when you gave it then?

A. Yes. That was from appearance the next morning, I should judge about the piling. I didn't know the slough was there.

Q. You didn't know the slough was there?

A. No, didn't know that the slough was there that the piling was in. I knew the slough was in, but I didn't know it was right in the slough. From the location the next morning, from the barges and things, I should judge it was right there at that piling.

Q. Now, when you first saw the Samson's lights,

had you passed the ranges or not?

A. Well, I noticed the Samson's lights about the time I swung down off the range.

Q. Just about the time you passed the ranges?

A. About the time I swung off the ranges. That was about the time we got steadied up, is about when I noticed them.

Q. Did the Samson change her course at all after you first saw her?

A. It looked to me as though she didn't. It looked to me like they kept on the same course.

Q. Now, in putting these models on this paper here at the suggestion of Mr. Wood, you have set them at an angle. I will ask you to state whether at the trial of Captain Jordan at the time and place I have before indicated, you did not testify as follows:

"Q. Do you have any idea as to how far the stem, taking it for the center, the stem of the Henderson was out from the side of the barge? What space was in between barge 93 and the stem of the Henderson?"

A. Well, I don't know exactly but I should judge—

Q. (interrupting) Did she lay against the oil barge on an angle? A. No, sir; she laid parallel with it as

near as I could tell. Q. She laid as near as you could tell parallel with the barge? A. Yes, sir, more than

that. Q. More than that. She laid that way (indicating)? A. No, they were both straight." Did you so testify at that time?

A. I believe I did. I testified at that time they were probably straight, I believe, about twelve feet

from the stem of the Henderson to the oil barge.

Q. You did so testify at that time, did you?

A. Yes, I believe so.

Q. Now, you testified that the Henderson was lashed to the barge at an angle. Which is right, the testimony you gave then or the testimony you give now?

A. I thought they were very nearly straight. I didn't notice them so very much. I just come on watch and it looked to me as though very nearly straight, in a parallel line.

Q. Now, why do you say she was lashed at an angle, and then you said they were laying parallel?

A. I probably got those a little more than I intended to get them. I said—I remember telling them up there that she was very nearly straight.

Q. You remember giving the testimony as I read it to you, don't you?

A. Yes, sir.

Q. Did any one suggest to you that you had made a mistake in that particular since you testified before the Inspectors?

A. No, sir. This is the customary way of making fast to barges—ships. It seems to me like that night it was very nearly in a parallel line.

Q. When you saw the Samson could you tell whether she was nearer to the Oregon shore or the Washington shore?

A. I couldn't tell exactly but it looked to me as though she was a little around in the bight of Bugby

Hole.

Q. That would be near the Oregon shore?

A. I couldn't say which side.

Q. That is the way it looked to you then?

A. She was out a little from the point of the Island.

Q. That is the way it looked to you?

A. Yes, sir.

Q. I will ask you whether or not you didn't testify, at the time to which your attention was called, in answer to questions addressed to you, I believe, by Mr. Shepherd, as follows: "Q. Could you tell which side of the river the Samson was when she came around the point? A. Yes, sir. Q. You could tell whether she was on the Puget Island side or the Oregon side? A. Looked like she was nearer the island side." Did you so testify at that time?

A. I don't remember saying she was nearer the island side.

Mr. ERSKINE WOOD: I think you should read the next question and answer.

Mr. MINOR: I looked and didn't think it necessary to read it. You can read it if you want to.

Mr. ERSKINE WOOD: (reading) "That you could not tell very well, could you, in the dark? A. No, not from my position."

Q. I want to know whether you so testified.

A. That is what I say now. I couldn't tell from where we were.

Q. But you did testify at that time, did you, that

it looked to you as if near the island side?

A. If up past Bugby Hole, looked as though close to the island. If down in Bugby Hole, she could be close to the Oregon shore.

Q. I say, you did testify looked as though close to the island?

A. Yes, may have been up a way to the point. If had looked close to the island; I couldn't tell that.

Q. Is the testimony you gave then or the testimony you give now correct, in your judgment?

A. I say now, I can't tell exactly whether in the middle of the river, next to the island, or the Oregon shore on account of this point. She could have been up above the point aways and looked as though close down, and still she would be closer to the Oregon shore.

Q. I call your attention again to the matter of your testimony, in regard to the manner in which the Henderson was lashed to the barge. I will ask you whether or not you didn't testify at that time and place to which your attention has been called—didn't testify as follows: "Q. Now, you don't know the beam of the Henderson, do you? A. No, not exactly. Q. If this blotter were the oil barge and you were to make fast the tow, would your keel be parallel with the keel of the oil barge, or how would she set? A. Yes, if we was made fast parallel with the barge, our keel would be parallel with their keel. Q. Yes, but do you tow in that position? Do you tow with the keels parallel, or do the boat's tow have a

different angle? A. Yes, they generally do in a case of that kind; just furnishing power they generally make fast straight with her. Q. Straight with her? A. Yes, sir. Q. Was that the way you were made fast? A. Yes, parallel with her as near as I could figure out." Did you so testify at that time?

A. Well, yes. That is what I say now. That is was made fast nearly parallel with her.

Q. Then you said parallel. Now you say nearly parallel.

A. Well, I don't know whether I said parallel then or not.

Q. The answer here is "Yes, parallel with her as near as I could figure out."

A. Well, this must have been a little bit off on an angle.

Q. Now, I want to ask you in connection with this lashing of the Henderson to the oil barge, was anything put between the Henderson and the oil barge?

A. Yes.

Q. What?

A. A rope fender, I believe.

Q. What is it?

A. Rope fender.

Q. How large is the rope fender?

A. About four-and-a-half or five feet across it. About six inches through.

Q. Four-and-a-half?

A. Four feet—four feet six inches, I guess.

Q. How long is it?

A. Well, it is made in the shape of a doughnut, round with a hole in the center of it. It is put over the guard of a boat.

Q. Over the guard of the Henderson?

A. Yes, sir.

Q. Or over the guard of the oil barge?

A. Over the guard of the Henderson.

Q. And about how large is that fender in circumference or in diameter? I don't care.

A. Not made very solid and it hangs. Sometimes it hangs up there; kind of droops down, gets a little narrower, and hangs longways, up and down—not so wide.

Q. How thick is that fender?

A. After up against the boat and the guard mashing up against it, it is not more than four inches—four to six inches.

Q. Four to six inches?

A. Yes.

Q. And at what point on the oil barge is that fender placed?

A. Right at the corner of the house. On the oil barge?

Q. Yes.

A. That is back on her stern pretty well. I don't remember at that time whether there was a rake on the stern of the oil barge set in under or not, but I thought there was.

Q. At what point on the Henderson was that

fender placed?

A. Corner of the house of the Henderson.

Q. Starboard side?

A. Starboard side, forward of the corner of the house.

Q. That is about opposite the point where you think the Henderson was struck?

A. Hanging over the guard.

Q. At a point about opposite where you think the Henderson was struck?

A. Yes.

Q. Was there any other fender?

A. No, that was the only one.

Q. When you first came into the pilot-house, which shore were you nearest to?

A. Why, naturally be Puget Island shore, that is, that Sand Bar below Puget Island.

Q. In answer to a question which was propounded to you by Mr. Minor upon the trial of Captain Jordan, I will ask you whether or not you didn't testify as follows: "Q. When you first came up did you see the Samson? A. No, not when I first came up.

Q. How long before you saw the Samson after you came up? A. Well, a couple of minutes, I guess. Q.

Where was the Samson when you first saw her? A. She was coming around the point here. Q. You saw

them with the green light? A. Yes, sir. Q. And where were you when you first saw her, now? A. I

was in the pilot-house. Q. I know, but how far down was the Henderson? A. Well, she was somewhere

right along in here. Q. She was still on the range lights, was she? A. Yes, sir. Q. Still on the range, and at that time you saw, I understand, only the green light of the Samson? A. At that time I only seen the green light. Q. How long after that before you saw the red and green light, both? A. Of the Samson? Q. Yes. A. Oh, I should judge it was a couple of minutes. Q. A couple of minutes? A. When she swung around here (indicating on chart).” Did you so testify at that time?

A. I think so.

Q. Now was that testimony correct or is the testimony you now give correct?

A. I don’t think that time is correct now.

Q. That was not correct then?

A. No, sir. Not the time. I can’t give it exactly.

Q. Now, upon the same examination, I will ask you whether or not, you didn’t testify as follows: “That is what I want to get at. When you came out you say you were right on the range? A. Yes, sir. Q. How long after you came out was it before you went below the range? A. Well, it was just a few minutes after I got there; I don’t know just exactly how long; five minutes, I guess.” Did you so testify at that time?

A. Five minutes before what?

Q. Before you crossed the range after you came on duty.

A. Probably so. I couldn’t say as to the exact

time.

Q. I will ask you whether or not upon the examination before the Inspectors at the trial of Captain Jordan, you didn't testify as follows: "Q. And how far do you think you were below the range lights, the range that those two lights made; how far do you think you were below that range? A. Oh, a couple of hundred feet. Q. You think you were a couple of hundred feet below those? A. Yes, sir." Did you so testify at that time?

A. I believe I did.

Q. Now you say—

COURT: That question refers to what time?

Mr. MINOR: That was at the time of the collision, your Honor.

Q. Now you say that at the time of the collision you think you were about 600 feet below.

A. I believe so.

Q. And then you said you thought you were about 200 feet below.

A. Yes, sir. Since I have seized up the situation more, I think it would be about 600 feet.

Mr. C. E. S. WOOD: Repeat that. Wait a minute—I want to get that.

A. Since I have been down there several times and sized up the situation, I think 600 feet below the range line.

Q. Have you been down there since?

A. Yes, sir.

Q. Who did you go with?

A. Passed down with boats.

Q. With whom?

A. Working on the boats.

Q. What boats?

A. On the Wauna; on the Henderson.

Q. Anybody call your attention to it?

Q. I speak about it nearly every time I go by there. I generally say something about it.

Q. Who was calling your attention to it?

A. Well, the crew on the boats generally speak something about the wreck.

Q. What crew?

A. Well, the crew on the Wauna and different boats have been on as we go by there.

Q. Can't you mention some particular man who talked to you about it?

A. I spoke to the captain of the Wauna, I believe about it.

Q. What is his name?

A. Captain Dolby, I believe.

Q. And who else?

A. I don't know who all was around there now. Not talking to any one man particularly.

Q. After talking with them you changed your mind about how far you think below the range, did you?

A. No, that wasn't the principal thing that caused me to change my mind, but I sized up the situation for myself and seen where it was; where the oil barge was anchored; where we was. I think we were at

least 600 feet from the range.

Q. How far do you think you were from the Oregon shore at the time of the collision?

A. Three or four hundred feet.

Q. Three or four hundred feet. Now when you were examined before the Inspectors, didn't you testify that in your judgment you were about a thousand feet from the Oregon shore?

A. Well, you can take that different ways you look at it. If you look straight across, or if you happen to look a little slant. Of course I may have looked in a different direction when I testified there than I have since.

Q. Did you so testify?

A. I remember testifying to that, yes.

Q. That you thought it was about a thousand feet from the Oregon shore?

A. Yes.

Q. And you testified at the same time you thought it was about how far from the Puget Island shore?

Mr. SNOW: Can't you point out the testimony where he said a thousand feet.

Mr. MINOR: I can point it out.

A. I think I said in that testimony I thought 1500 feet from Puget Island.

Q. Now, how far do you think it was?

A. Well, I would take it—a straight line across in that narrow part of the river, would be about 1500 on one side and about that much on the other.

Q. 1500 on either side?

A. About 400 on the other.

Q. 400 on the other?

A. Yes, about 1500 on one side and 400 on the other.

Q. You were talking to the Captain of the Wauna and other people about that weren't you? About the mistake you made in that particular?

A. Yes, I have mentioned that, I believe, about how far we were from the shore.

Q. Now, let me ascertain another thing. How long did you say it was after the second whistle was sounded before the collision took place?

A. The second whistle—about a minute-and-a-half.

COURT: You have been over that.

Mr. MINOR: I have been over that, your Honor, but I want to ask him.

Q. About a minute-and-a-half?

A. I think so. Something like that.

Q. After the crash, Mr. Stayton, which way did the Henderson go?

A. Well, after they came together, or about the time they came together is when I left the pilot-house.

Q. Well, you were still on the boat, weren't you? You could tell which way going—forward or back.

A. She was backing when I left the pilot-house but she didn't back very far.

Q. Did you see the oil barge after the crash?

A. Not after we broke loose from her. I didn't

pay no more attention to it.

Q. You didn't see her after the crash then?

A. No, just about the time of the crash; that broke us loose and the crash together. I never paid no more attention to the oil barge.

Q. Did you see it?

A. See the oil barge?

Q. Yes.

A. Yes, I seen the oil barge at the time of the crash.

Q. Did you see it after the crash?

A. Not very long after, no.

Q. Did you see it until after the crash?

A. I seen it until we got away from it.

Q. Which way was the oil barge going?

A. She was swinging to starboard.

Q. Was she going forward or back?

A. She didn't have very much headway on her. I don't know—well she would be going ahead a little but not very fast.

Q. She was going ahead, was she?

A. Just was going ahead.

Q. Going ahead. That is what I want to get at.

A. Not very fast.

COURT: You mean going ahead in the stream or going ahead as compared with your own boat?

A. We was both going ahead at the same time until the crash came, and of course tore us loose from the oil barge. Then I don't know what became of her.

Q. Could you see the bluff on the Oregon shore at the time of the collision?

A. Yes, I could see the shadows.

Q. Could you see the shore?

A. Well, not right in the bluff, I couldn't, but I could see the lines of the bluff, that is the shadows of the bluff, the tops of the trees. I would have to judge by that about where the shore was.

Q. You couldn't see the shore at all, could you?

A. No, not at the bluff.

Q. How high is that bluff? I think the chart gives it a thousand feet, your Honor. I am not sure. The chart I think gives the bluff at about a thousand feet.

A. I couldn't see how high it was.

Q. If the bluff was anything like a thousand feet high, would that obstruct the shore line, and did it obstruct the shore line?

A. Well, fairly well, yes, but below the bluff I could see the shore, that is down stream from the bluff.

Q. Down stream from the bluff?

A. Yes, that is I could see the shadow—that is the outline of the shore.

Q. You saw the oil barge where she was anchored the next day, did you?

A. Yes, sir.

Q. How far was she anchored below the range line in your judgement?

A. 700 feet I guess—800.

Q. Do you know where that range line hits the

Oregon shore?

A. Pretty well.

Q. What?

A. Not exactly.

Q. How far was she anchored below where that range line hits the Oregon shore there?

A. I couldn't tell you exactly by telling you, but I could show you down there, going across.

Q. Now, at the time you were examined before the Inepectors, I will ask you whether or not you didn't testify as follows. I think the examination was then being conducted by the Inspector, but I am not sure:

"Q. Somewhere between those two sloughs. Now, did you see the oil barge after it anchored? A. Yes,

sir. Q. Where was it? A. It laid over right in

below—above this fish trap, laid over in here below the bluff. Q. Where it anchored was above or below

the range line? A. Below. Q. How far below? A.

Well, I judge it was anchored right in there somewhere. Q. How far do you think it was below the

range line? A. Oh, it must have been a couple of hundred or three hundred feet, I guess, may be more,

where the range lights hit in to the point there down to the bow of the oil barge. Yes, it was. Q. I don't

mean measuring along the shore, but I mean—A. You mean direct out? Q. Yes, direct out; how far

from the range line was it in your judgement? A.

Oh, I should judge it was close to a thousand feet.

Yes, close to a thousand feet out there. No, it wasn't

that far. It is hard for me to just say. I am not

familiar with towing ships or anything like that, down there. I guess it is 800 feet anyway."

A. Well, I didn't know at that time just exactly where the range light would cross that, you know—out from that oil barge. I kind of noticed it a little more since this accident.

Q. You didn't know at that time where it crossed?

A. No, couldn't tell just exactly how far out the range line ran from where we was anchored.

Q. No, did you see the rock barges after they was anchored?

A. Well, yes, I seen them.

Q. How far was the collision from where the rock barges were anchored?

A. Between a quarter and a half a mile I guess.

Q. In what direction?

A. It was off down towards the range lights. I couldn't say just exactly what direction.

Q. They were down towards the range lights?

A. Yes.

Q. Down the river from where the collision took place?

A. Yes. When I said the oil barge—where we stood or the oil barge?

Q. No, from the collision. Were the rock barges down the river from where the collision took place?

A. Yes, they was down the river from where the collision took place. Where I stood, the oil barge was looking down towards the range lights.

Q. On which side of the ranges were the rock

barges anchored, in your judgement?

A. Well, I couldn't say as to that for I never took very much notice of it.

Q. You don't know whether anchored on the Puget Island side or the Oregon side of the range light?

A. No. Off Puget Island somewheres. I forget now just about where they were.

Q. Now, I understood you to say that the rock barge didn't hit the oil barge, in your judgement, at all. Is that right?

A. The rock barge didn't hit the oil barge, no, sir; not that I seen.

Q. Not that you saw. Did you see any injury to the oil barge the next morning, while you were on it?

A. I seen a little place where the paint was rubbed off, yes, along the track of the breast line.

Q. Now, don't that—wasn't that caused by the rock barge rubbing against it, in your judgement?

A. No, I couldn't say. It could have been caused by the boat. I couldn't say she done it. I never seen the rock barge hit the oil barge and I couldn't say that was caused by that.

Q. What was your judgement in that regard at the time of the accident? Or the next morning when you saw it?

A. Well, I thought the guard of the Henderson had done it.

Q. Now, I will ask you whether on your examination before the Inspectors, you didn't testify as fol-

lows:

A. Might have been done by the rock barge I guess, but I thought—

Q. (Continuing): "Q. Did you notice on the side of the oil barge a place where the paint had been apparently damaged? A. I seen a place on the side where it had been rubbed up against." I will skip the questions that are unimportant. "From the appearance of it, could you tell whether it had been recently made or not? A. It appeared to me as though it came off the barge, but I could not say. Q. You think that came off one of the rock barges, do you? A. I think it did. It may have been when the port stern line broke on the port barge, after hitting the Henderson there it may have swung around and hit the oil barge. At that time I didn't see it." Did you so testify?

A. I believe I did, yes.

Q. Now, was that your opinion at that time?

A. Well, I don't know. It could have been made from either one of them, for that matter, I think.

Q. Mr. Stayton, was the Samson coming straight down the river, or coming on an angle down the river.

A. The Samson coming down at an angle or straight?

Q. Or straight.

A. Well, somewheres just about straight with the Oregon shore.

Q. She was about straight with the Oregon shore?

A. Yes, I guess somewheres like that. I couldn't say the exact course in steering; it would be impossible for me to do.

Q. Was she straight up and down the channel or across the channel?

A. No, she was coming down the channel.

Q. Straight up and down the channel, was she?

A. Yes, sir, as near as I could tell.

Mr. ERSKINE WOOD: He didn't say straight up and down the channel.

Mr. MINOR: I understood him to.

Mr. ERSKINE WOOD: You said that. You put that in his mouth.

Mr. MINOR: I didn't mean to misquote but he speaks so low I can't understand.

Q. I say, was she laying straight up and down the channel as she came down?

A. Apparently so after she came around the point of Puget Island as near as I could tell.

Q. After she came around the point of Puget Island, as near as you could tell, she was lying straight up and down the channel?

A. Down the Oregon shore, something like that.

Q. She was lying up and down the channel?

A. Yes, up and down the river. I don't know whether straight with the channel or not, but I know up and down the river.

Q. Now, again I want to call your attention, Mr. Stayton, to your testimony before the Inspectors. Do you remember there were some models produced at

that time, of the boats, tacked together?

A. Some what?

Q. Some models of the three barges and of the Samson lying between them.

A. I didn't use no models there, tacked together.

Q. Do you remember something like those being shown?

A. No, sir, didn't have nothing like that.

Q. Do you remember some little paper models?

A. Had some little paper models there, about half an inch long, I guess. Something a man couldn't handle very well.

Q. You remember those, do you?

A. Yes, sir.

Q. Now, I will ask you whether at that time you didn't testify as follows: "Could you locate on that chart about how far below the range you were. A. Oh, I could give you some kind of an idea, I suppose.

Q. This is the one marked Henderson (referring to models). Just put that as near as you can. (Witness illustrates with models.)

A. I don't know. Q. You

think you were a third of the way below the range, between there and Tenas Illihee? A. No, I guess

we were a couple of hundred feet. No, we wasn't that far; somewheres in the neighborhood of—well,

from the middle of the range I guess we were about a couple of hundred feet. Q. Below? A. Yes, I

should judge." Did you so testify at that time?

A. Probably so, yes.

Mr ERSKINE WOOD: Nothing in that testi-

mony to show at what time.

Mr. MINOR: At the time of the accident.

A. I testified at that time, I believe, we was off the ranges eight or ten feet. I could see between those two ranges eight or ten feet. And I don't know how far apart them lights were and consequently I don't know how far that would take us off the range line.

Mr. C. E. S. WOOD: May I interrupt to ask a question? When you say off the range 8 or 10 feet, do you mean off the range line, we ran 8 or 10 feet by angle, or you were 8 or 10 feet off the range?

A. What I mean by that is you can see between those two lights; one is above the other and the high one sits back.

Q. And it opened up at an angle of 8 or 10 feet as it looked to you?

A. Yes, if you get out to the side of them you can see between those lights; I should judge opened up about 8 or 10 feet. I didn't know at that time how far that would take us off the range line.

Q. After you were taken off the Henderson, where did you go?

A. I went on the Samson.

Q. Did you have any talk with any officer of the Samson while you were on the Samson?

A. Well, I believe Captain Jordan asked if we heard his whistle. I told him, yes, we heard the first whistle. I don't remember outside of that having any talk about the collision or anything.

Q. Didn't he ask you whether you heard his

whistles?

A. Well, he might have said whistles, but it meant one whistle.

Q. Don't you remember that at that time, after you were taken off the Henderson and had gotten on the Samson, in the presence of Captain Jordan and some of the crew, whose names I do not know, but it was immediately after you got on the Samson, that you said to Captain Jordan, or to Captain Anderson that you did hear the whistles, and that you thought it strange Oil Barge 93 should blow one whistle when she had her green light visible, or in sight?

A. No, I don't remember saying that.

Q. Will you say that you did not say that?

A. I am positive I didn't say it, yes. If I did say it, I don't know nothing about it. I am most positive I didn't say it. I don't remember saying anything like that.

Q. Now, I want to call your attention, Captain, to your testimony in regard to where the rock barges were anchored. On the trial of Captain Jordan before the Inspectors, I will ask you whether or not you testified as follows: "Where were these barges, the rock barges, anchored the next morning when you were on the Samson? A. Well, I don't know just the location of them. I didn't pay no attention to them. Q. Could you define on that map about where they were? You saw them, didn't you? A. Well, they were anchored over this side of the channel somewheres right down in the lower end here (indi-

cating in chart). It seemed to me it would be somewhere down towards the lower end of the island here; and one was over in here somewhere. Q. They were anchored on the starboard side of the range light, weren't they? A. Yes, sir. Q. And much nearer to the Washington shore or the island shore than the Oregon, weren't they? A. Yes, they were a little bit closer to the island shore. Here is the Oregon shore. Q. You don't think they were more than two or three hundred feet from the island shore, do you? A. I don't know just how far they were, and I know they were pretty well over to the island. Q. Pretty well over to the island? A. Yes, sir." Did you so testify?

A. I told them was down there somewhere, but I don't know the exact location.

Q. Well, did you testify as I have read those questions and answers to you?

A. I probably did. I don't remember just exactly.

Q. Well, was that your best information and your best belief at that time?

A. I believe so, if that is correct.

Q. That is correct you say?

A. I say if that is correct. I don't remember just how I did testify on that. I told him about as near as I could to where they were anchored.

Mr. MINOR: Will you admit he did so testify, Mr. Wood, or will I have to prove it?

Mr. ERSKINE WOOD: Yes.

Mr. MINOR: It is admitted by the proctor for the

Libellant that he did so testify at that time. I will offer in connection with that this little diagram—this angle at which he said the vessels approached.

Mr. C. E. S. WOOD: What is that?

Mr. MINOR: He made a diagram here showing the course of the Henderson and the course of the Samson as they came together.

Diagram a part of Libellant's Exhibit 6.

Redirect Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Stayton, Mr. Minor asked you this question: Do you know whether either of the rock barges hit the oil barge, and you answered "No, sir." I don't know whether you mean that neither rock barge hit the oil barge or that you don't know whether they did or not. Which did you mean?

A. Well, I don't know. If the port rock barge hit the Henderson, she probably could have swung around after I left and hit the oil barge, astern.

Q. You mean could have hit the oil barge with her stern?

A. Yes, the stern of the rock barge could have hit the oil barge.

Q. Now, I am not sure just how this testimony came up, but as I remember, it was like this: you said that when the helm was put hard aport on the oil barge and you saw her commence to swing, you saw there was going to be trouble; and a little later on, as I remember it, Mr. Minor asked you when you

heard the second whistle blown, then you saw there was going to be trouble.

A. Yes, sir.

Q. And I want to know whether you mean that at the time the second whistle was blown you saw there was going to be trouble, or that you didn't think there was going to be trouble until a little after that when you saw the barge swing toward the shore. Which did you mean?

A. When he blew the second whistle, I thought there was probably going to be trouble then. I hadn't seen the Samson alter her course that I could tell. I thought probably going to be trouble, so I kicked on the wall to call the captain.

Q. Mr. Minor read to you from your testimony before the Inspectors on page 144 and another page, anyway it was to the effect that you said that the collision occurred around this little slough where the piling was.

A. Abreast of that.

Q. Well, I just want you to make that clear. What did you mean by that?

A. I mean abreast of that; out in the river from that—across.

Q. You mean, judging your position up and down the river you were about abreast the little slough?

A. Yes.

Q. But you didn't mean you were very near it?

A. No.

Q. You mean were over the Oregon side, on the

opposite side of the river from it. Is that it?

A. Yes, sir.

Q. I will ask you whether or not you didn't testify before the Inspectors at the trial of Captain Jordan as follows on that same point: "Q. And then the accident took place over here? A. No, I didn't say it took place over there. 'Q. You said they came together there? A. No, I said abreast of that, out in the river from there. Q. No, you didn't say that to begin with; you said they came together about where that little swale was. INSPECTOR FULLER: He said abreast of that. A. I said abreast of it. That is what I meant." Did you so testify?

A. I did.

Q. In answer to a question from Mr. Minor, as I remember it, you said that after you saw both side lights of the Samson, you didn't observe her change her course, and I would like to ask you whether you had any other means of judging her course than by her side lights?

A. No, not exactly.

Q. What you mean to say is that as you were proceeding up the river you continuously saw her side lights?

A. Yes.

Q. When you were testifying before the Inspectors, as Mr. Minor has called to your attention, and said that the Henderson was laying parallel on the port quarter of the oil barge, did you mean to say that they were on a dead parallel or that that was their

approximate position?

A. Very nearly so; very nearly on a parallel line is what I generally call it.

Q. I don't exactly understand what you mean in that same testimony, at the top of page 154; You testify as follows: This has already been read to you. "She laid as near as you could tell parallel with the barge? A. Yes, sir, more than that." What did you mean by "more than that?"

A. A little out of line.

Q. What is that?

A. With the nose in a little bit.

Q. Did you superintend the lashing of the barges together—I mean the Henderson and the oil barge?

A. In Astoria?

Mr. MINOR : I didn't ask about that.

Mr. C. E. S. WOOD: He wasn't on deck.

Mr. SNOW: What is his answer to that question—whether he superintended the lashing at Astoria?

A. No.

Mr. SNOW: Who did it?

A. The mate.

Mr. SNOW: Where is the mate?

A. I don't know where he is now. I haven't heard anything of him since he left the Henderson.

Mr. MINOR: What was his name? I have forgotten.

A. Crosby, I believe.

Q. (Erskine Wood) Mr. Stayton, at the foot of Puget Island, which side of the river is the range

nearest to? Is it closest to Puget Island or is it nearest to Tenas Illihee Island?

A. Puget Island.

Q. Is it considerable nearer to Puget Island or not?

A. Yes, I believe it is, that way it runs, closer to the foot of Puget Island than the other shore.

Q. You said before the Inspectors, as has already been called to your attention, that you thought the collision occurred about 200 feet off the Oregon shore, and that since then you have observed the situation and studied it more and have come to a different conclusion. I would like to ask you whether you haven't been working up and down, past that spot, ever since that collision?

A. Yes, sir, have been going up and down there considerable.

Q. What have you been doing?

A. Running pilot on different log boats; towing logs up out of Clifton channel and the other shore; up the main channel; that is the other shore, on the main side of the island.

Q. About this paint you noticed rubbed off the oil barge the next morning, where was that? Was it abreast of where the bow of the Henderson was lashed, or was it abaft of that or forward, or where?

A. A little aft of the bow.

Q. A little aft of the bow?

A. Yes.

Q. Is it your opinion that was rubbed off by the

bow of the Henderson, or by the stern of the rock barge swinging around?

A. I thought it was done by the Henderson. It could have been done by the stern of the rock barge if it swung that way.

Mr. ERSKINE WOOD: Mr. Minor, I understood that when you read from his testimony before the Inspectors, commencing at page 209 and finishing at the middle of page 210, were you intending to convey the meaning that at the time of the collision he was a couple of hundred feet off the range. I think I asked you what you meant there and you said at the time of the collision.

Mr. MINOR: That is what I said; at the time of the collision.

Mr. ERSKINE WOOD: I think if you will read what comes before and after, you will see he doesn't mean that.

Mr. MINOR: Read it if that is what he means. Read just before it, and you will see.

Mr. ERSKINE WOOD: I will read that.

Mr. SNOW: Read the whole thing.

Q. (Mr. Erskine Wood) Mr. Minor read you part of this and asked you if you so testified. This is before the Inspectors, at the trial of Captain Jordan: "Q. Do you remember of noticing that you were below the range when you were coming up with the tow after you had seen the Samson? A. Yes, sir, I noticed being below the range. Q. Did you notice about how far below the range you were with refer-

ence to the Tenas Illihee shore? A. Well, I didn't get any line on the point of the island. Q. Could you locate on that chart about how far below the range you were? A. Oh, I could give you some kind of an idea I suppose. Q. This is the one marked Henderson, (referring to models). Just put that as near as you can. (Witness illustrates with models). A. I don't know. Q. You think you were a third of the way below the range, between there and Tenas Illihee? A. No, I guess we were a couple of hundred feet. No, we wasn't that far; somewheres in the neighborhood of—well, from the middle of the range I guess we were about a couple of hundred feet. Q. Below? A. Yes, I should judge. Q. Did you ever have any fear of getting aground because you were so far below the range? A. Yes, I did. When I seen them swinging over there at that time. I don't know exactly how far up we was, that is, to clear these sands; I don't know the location of these sands at that time. I seen them swinging over there and I kept watching the range, and I thought probably he would run aground there, but I thought he knew his business better than I did; so I see he made it all right. Q. That was because he was so far below the range that you had that fear? A. Yes, he got well below the range. I knew these sands were over here; and they were lower down than I thought they was when we got over here. At that time I stepped forward to the forward window in the pilot-house to be sure to listen in case he hollered to stop, or any-

thing." I will ask you whether you meant by that—first I will ask you whether you so testified.

A. Yes.

Q. Now, I will ask you whether you meant by that testimony that at the time you first swung off of the range, about a little above the point of Tenas Illihee Island, about in there, you were 200 feet off the range, or whether you meant by that testimony at the time of the collision you were 200 feet off the range?

A. At the time we swung over there is what I had reference to. He came over so far—

Q. Where are those sands you meant here as causing you to think you might get aground?

A. They were further down than what we were. We were up higher than I thought we were.

Q. They weren't anywhere near the point of the collision, were they?

A. No, sir.

Questions by C. E. S. WOOD:

You said in answer to a question by Mr. Minor that you had been talking this collision matter over with the Captain and crew of the Wauna, and the crew of the Henderson. I will ask you whether or not they were present at the time of the collision and professed to know anything about it.

A. No, sir, none of them were there at that time of the accident.

Q. Were they attempting to give you any information or were they asking you about it?

A. They were just asking me where it happened, where it was and different places where the things were.

Q. And since this examination at the trial of Captain Jordan, you have been checking over these matters of estimates of time and distances down on the spot there, and the testimony you give today is your latest and best recollection and opinion of the matters you testify to, is it?

A. Yes, sir.

Q. Who is Captain Jordan?

A. What is he?

Q. Who is Captain Jordan?

A. He was pilot on the Samson.

Q. That night?

A. At the time of the collision, yes.

Recross Examination.

Questions by Mr. MINOR:

Were you working for the Shaver Transportation Company?

A. Yes, sir.

Q. Are now, are you?

A. I am working for them, yes, sir.

Q. And have been ever since this collision?

A. Yes, sir.

Mr. C. E. S. WOOD: When you talked about talking with the crew of the Wauna and the Henderson, you meant the new rebuilt Henderson, did you? You meant the new Henderson—the one that is run-

ning now?

A. Yes.

Witness Excused.

HENRY KNESS a witness called on behalf of the libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by Mr. ERSKINE WOOD:

Mr. Kness, what is your business?

A. Fireman.

Q. Steamboat fireman?

A. Yes, sir.

Q. Were you on the Henderson at the time of the collision with the Samson?

A. Yes, sir.

Q. July, 1911?

A. Yes, sir.

Q. Were you firing that night?

A. Yes, sir, I was on watch.

Q. On watch at the time of the collision?

A. Yes, sir.

Q. When did you go on watch?

A. Well, I went on watch when we left Astoria, but I let the other fellow sleep. I stood a part of his time.

Q. You were on watch at the time of the collision?

A. Yes, sir.

Q. Did you hear the testimony of Mr. Oleson?

A. Today you mean?

Q. Yes.

A. Part of it.

Q. Did you hear him mention the bells that he received?

A. Yes, sir.

Q. Did you hear any of those bells?

A. Yes, sir.

Q. What did you hear?

A. Well, I heard the stop bell, and the reverse and back up bell.

Q. To stop, to back, to reverse. How did they follow?

A. Stop, reverse and back.

Q. Oh yes. How did they follow each other?

A. Rapidly.

Q. All together?

A. Yes, sir.

Q. Did you hear the other bells he referred to?

A. No, sir.

Q. How do you account for the fact that you didn't hear them?

A. Well, the steam pipes, they broke and so much steam blowing around me; so much noise I couldn't have heard it, after they all broke.

Q. How near were you standing to the point on the Henderson where she was stove in?

A. Right abreast of it. I was in the fire hole at the time.

Q. About how many feet away from that place?

A. About ten feet, I guess; twelve, something like that.

Q. How soon did the water rush in after that?

A. Well, the instant I heard the crash, the water was up to my knees.

Q. Up to your knees?

A. Yes, sir.

Q. You must have had to hustle out lively.

A. I did. I shut everything off and left right away—left the fire hole.

Q. Have you any idea what time the Henderson was backing?

A. A very short time; less than a minute.

Q. Did she back after the crash?

A. Well, that would be pretty hard for me to say.

Q. Do you know whether her engines were in condition to back or not?

A. After the crash?

Q. Yes.

A. I don't see how they could have been for she was sinking right away and the wheel was going down in her, and it would take an awful lot of power to turn the wheel over after she settled down in the water.

Q. How soon after the crash did she commence to keel over on her side?

A. Right away. Almost right away.

Q. Any idea how long it was after the crash before she was way over on her side, sunk?

A. Well, about two minutes, I think.

Q. Did you notice the shore?

A. I did not.

Q. Didn't notice the shore?

A. No, sir.

Q. Were you on the oil barge the next morning?

A. Yes, sir.

Q. Did you notice her port quarter? Was there any paint rubbed off her port quarter?

A. Yes, sir.

Q. Where was it rubbed with relation to the place where the Henderson was lashed?

A. Well, the paint was rubbed off about—oh about 50 or 60 feet from the stern of the oil barge, aft.

Q. The stern of the oil barge aft. Just explain a little more fully what is meant by that.

A. The paint was rubbed off, it looked to me about 15 feet—15 feet—a scratch about 15 feet long.

Q. That couldn't be aft the stern of the oil barge.

A. Well, where the scratch began, from forward aft about 15 feet.

Q. Would that be the natural place where the guard of the Henderson would rub?

A. Yes.

Cross Examination.

Questions by Mr. MINOR: Mr. Kness, Mr. Stayton said that place where it rubbed off was in front of where the bow of the Henderson was. Are you mistaken or is he mistaken?

A. I don't know; that is just how he had. I just guessed about what.

Q. I just want to see how accurate it was. You just guessed at that then?

A. Yes.

Q. You don't know where it was—didn't observe it carefully?

A. No, sir.

Witness Excused.

CAPT. J. W. SHAVER a witness called on behalf of the Libellant, being first duly sworn, testified as follows:

Direct Examination.

Mr. C. E. S. WOOD: In calling this witness we would like to have it understood that we think, for the benefit of the court and the other side, we will only use him as far as we desire in this matter of the collision, but the matter of accounting, or damages, or expenses we reserve. Possibly it may go before an examiner, and we don't wish to put his entire testimony in at this time.

Questions by Mr. ERSKINE WOOD:

Captain Shaver, what position do you occupy in the Shaver Transportation Company?

A. I am secretary and manager.

Q. The business of that company is steam boating?

A. Yes, sir.

Q. That is the company that owned the Henderson which was wrecked?

A. Yes, sir, the Shaver Transportation Company.

Q. Can you give the dimensions of that boat?

A. The Henderson?

Q. Yes, the old Henderson.

A. Why, she was 160 feet long, or 158.7; 31 foot beam; 7½-foot hold.

Q. How wide are her guards?

A. 22 inches from hull to outside of the nosing, that is 22 inches midships; of course up forward they are wider there.

Mr. MINOR: How long did you say?

A. That is midships along the straight side of the boat.

Q. Is that the part of the boat which lies alongside a vessel when towing?

A. She don't touch alongside the vessel there; they usually have a bearing right forward part of the house; the guard would be a little wider there, perhaps three feet. The hull begins to draw in; of course the guard draws in some but the hull draws in a good deal more than the guard.

Q. That was an oil burning boat or wood?

A. Oil burning.

Q. Have you towed yourself?

A. Yes, sir.

Q. How many years?

A. I have been in the business about 32 years. I have towed more or less at different times all the time.

Q. I wish you would explain the manner of lashing one of these river towboats along the side of a ship to bring her up, particularly with reference to the angle at which they lie. Explain how the current affects the bow to counteract the steerage.

A. We always lash a boat a little quartering, because if put parallel by pushing on one side, has a tendency to push it around, so we offset that by putting it a little quartering, so if the current strikes that side—

Q. Which side?

A. If towing up the port side, we would bring the bow of the tow a little toward the tow boat.

Q. How would that cause the water to strike the bow of the tow?

A. On the opposite side, so as to kind of offset that, so as to steer with a straight helm. So you don't have your wheel over all the time—the rudders. In a tow like this, I imagine the stem would be about three feet closer than she would at the stern.

Q. Three feet off a parallel line with the keel?

A. Yes, in a length of about 100 feet. The boat would lap up on the tow about 100 feet.

Q. You said at the point of contact between the tow boat and the tow the hull was drawn in a little but the guard was a little wider.

A. Well, the guard goes in a little bit but not near as much as the hull.

Q. How wide is the hull at that point?

A. Perhaps the forward part of the house there would be about, I should think two or three feet narrower right there. Two feet anyhow. Of course on this boat we had big large timber fastened right under the guard there to make it stronger for towing ships.

Q. I will hand you a series of photographs marked from 1 to 8, and ask you whether you were present when they were taken. Just look at them and see.

A. Well, some of these I was present and others I am not certain. Some of these were taken by a photographer at Cathlamet, these light colored ones, and these were taken when the boat was brought to Portland, at the ship yard, these three.

COURT: By light colored, you refer to borders?

A. Yes. These with derrick and barges, I was present when they were taken, but this first one I am not—

C. E. S. WOOD: Call it the number in the corner.

A. Number one, I am not positive whether I was there when taken or not, the first morning after the wreck, but I think I was, because I went down the next day after she sunk. Number two, I was there when that was taken. This is Bugby Hole there; that is the point of the island. This is—

Q. We will show that a little later on.

A. Number 3; I was here when that was taken. That was taken in the shipyard. Number 4, that was taken just after we first put her on the ways.

Q. Were you there?

A. Yes, sir. Number 5, I was there when that was taken after she was hauled out on the ways.

Q. That was here in Portland, Number 5?

A. Yes, sir, that one there. Number 6 was taken down the river. I was there when that was taken. I was there when seven was taken, also number eight.

Q. The only one you are not sure about is number one?

A. That is the only one. I think I was there when that was taken although I am not real certain, but that is the way the boat was laying when I went down the next day after the accident.

Mr. MINOR: What is the object of that?

C. E. S. WOOD: To show the court. I think it is better than any verbal statement. Any objection to it?

Mr. MINOR: Yes, I don't think they show anything.

Questions by C. E. S. WOOD:

Did those photographs correctly represent the situation at the time they were taken?

A. Yes, sir.

Q. And when were they taken in reference to the collision? Take Number one, how soon after the collision?

A. That was taken the next day after the collision. That is, the boat lay in that position for perhaps two days, maybe three before we got chains under her.

Q. And that represents her lying where?

A. Where she was the next day after the collision; where she drifted down on the sand bar.

Q. Did you locate that position by points on the shore?

A. Yes, sir.

Q. What was the location?

A. That was in range with point of Tenas Illihee Island, and perhaps about twenty feet above the foot of Puget Island, and in range with either a school house or a church at Cathlamet. I am not certain whether a school house or a church.

Q. How, in relation to the range lights?

Mr. MINOR: How did you say?

Q. I meant the head of Tenas Illihee Island. I may have said the foot; I meant head, about twenty feet above the foot of Puget Island, and there was a church or a school house at Cathlamet. I am not certain which.

Q. Did you do anything to determine the location of the wreck in relation to the range light, and if so, state what you did.

A. Why I took a range from Skamokowa light and some pilings on Furze's point.

Mr. MINOR: Skamokowa light?

A. Some piling on Furze's point; there was one piling in close to the point and one out about three hundred feet, two or three hundred feet, and about half way between these two pilings. And I afterwards measured the distance from the range lights to where this boat lay and it was 1530 feet from the range lights to where the boat is laying.

COURT: That is the range itself or from the range lights?

A. The range of the lights, the channel.

COURT: The nearest point on the range?

A. Well, right in range with the lights to where

the steamer was laying after she sank.

Q. You are speaking about measurements from the lights themselves or from the range line?

A. No, from the range line. The lights are about a mile below that.

COURT: But measured at right angles to the range so as to reach the nearest point on the range. Is that it?

A. Yes, sir.

Q. Now, just so as to keep the thing plain. Suppose this to be the point of Tenas Illihee Island; this to be the point of Puget Island and this to be the Hunting Island range lights, and this the range line of these lights, as marked on this chart, as I have respectively called them. Now locate the position of the wreck of the Henderson as you determined it, as you have just described it.

A. That is 1530 feet from here toward the point of the island and in line, just about 20 feet above there to this point. (Indicating on libellant's exhibit 15.)

Q. Lay it down on the chart.

A. Now, I can't tell how 1530 feet is there, though. It is a little over half way across here.

Q. Mark it that way.

A. I don't have to get the scale, do I?

Q. No.

A. It is about there somewhere. It is about two-thirds of the way across there. (Indicating.)

Mr. SNOW: Two thirds of the way from the range or from the shore?

A. No, from the range to the point.

Q. Tenas Illihee point?

A. Yes, sir. She was laying right cross ways of the current.

Q. And this dotted line from the range line to the wreck called A-B, by measurement was 1500 feet?

A. 1530.

Q. Now, do these other photographs correctly represent the situation at the time they were taken?

A. Yes, sir.

Q. Give me number five. Does that correctly represent the stem of the Henderson?

A. Yes, sir.

Q. Did you examine her yourself?

A. Yes, sir.

Q. Any dent or sign of collision in it?

A. Well, no sign of a collision. There was a very little crook in top of the stem iron, but so you couldn't notice it with the naked eye.

Mr. ERSKINE WOOD: How did you find out that crook was there.

A. Some testimony that showed she had a collision there before the Inspectors, and they testified that there was a crook in the stem, so I took a straight edge and put on there. I couldn't see it with the naked eye, so I took a straight edge and tried to see, and in a length of about seven feet, there was about one-quarter inch bent. I don't think it was done with any collision or anything. It seemed as though it might have been there since the boat was built. I

don't know.

Q. Now, take number two. That was taken when?

A. That was taken down at the wreck after we got there.

Mr. ERSKINE WOOD: After who got there?

A. After I got there, that is a couple of days. We was there about three days, I think before we got her out of this position. It was taken some time before that three days. This is the point of Puget Island.

Q. Which is?

A. This point right there. This is Bugby Hole up in here.

Q. Point "A" is the point of Tenas Illihee Island?

A. Point of Puget Island, the upper point, not the lower end.

Q. The very upper point?

A. Not clear at the upper end, but the bend in Bugby Hole.

Q. It is the point around which the Samson came?

A. Yes.

Q. And what is this high head land over here?

A. That is the bluff.

Q. That has been talked about?

A. Yes, talked about so much. This is Bugby Hole up in here.

Q. And this is Bugby Hole?

A. Yes, that is Bugby Hole.

Mr. ERSKINE WOOD: Is that looking up or down the river?

A. This is looking up the river. This is where Clifton Channel goes down this way; this main channel goes down this way. (Indicating.)

Q. That correctly represents the situation. You were present when taken?

A. Yes, sir.

Q. And these that you have spoken about, these six, seven and eight, represent the attempt at raising her with derrick and wrecking barge do they?

A. Yes.

Q. Correctly represent it.

A. Yes, sir.

Q. Were you present?

A. Yes, sir.

Q. And three and four represent her lying out here at the boneyard or shipyard, do they?

A. Yes, sir. Four is when we just put her on the cradles after taking barges away.

Q. What is three?

A. Three—just after she was hauled out on the ways.

Q. Was she as represented in three, in substantially the same condition as when you raised her up, and brought her up?

A. Yes, sir, exactly the same as when we got her here.

Q. From Tenas Illihee bank there?

A. Yes, sir.

Mr. C. E. S. WOOD We will offer them in evidence in connection with the testimony.

Mr. ERSKINE WOOD: Do you mean the house was not on her when you raised her off Tenas Illihee bank?

A. No, sir, no house. The house went off. The house all mashed. When we got down the next morning, she was laying on the side; the house and part of the guard was all gone; that is, when we got her up so we could see, the guard was off from where broke to clear aft.

Mr. MINOR: I want to make objection.

COURT: State you objection.

Mr. MINOR: As far as number one is concerned, your Honor, I object to that upon the ground that it is incompetent, insofar that it doesn't indicate in any way either the position of the wreck or the condition of the wreck. It is merely a photograph of something or other from which no one could guess anything.

A. You could guess all right if you had been there.

Mr. MINOR: It doesn't indicate anything at all.

COURT: Objection overruled.

Marked Libellant's Exhibit 7.

Mr. MINOR: I would like to ask a few questions about number two. From what point was number two taken?

A. Taken from something up someway in the river.

Mr. MINOR: From what point?

Mr. C. E. S. WOOD: About where in the river?

A. Would be right below the line of Tenas Illi-

hee Island and Puget Island and below the wreck.

Mr. MINOR: Below the point of Tenas Illihee Island?

A. The steamer is lying in between Tenas Illihee Island and Puget Island and this was taken from right below that, with a small boat; we didn't have taken.

Mr. C. E. S. WOOD: By steamer you mean the Henderson?

A. Yes, sir.

Mr. MINOR: From what point? From above the point of Tenas Illihee or below the point of Tenas Illihee or where?

A. A little below the point of Tenas Illihee and below the point of Puget Island. The steamer here is in line with these two islands and the picture itself is taken upstream.

Mr. MINOR: I have no objection to this one.

Picture marked Libellant's Exhibit 8.

Mr. MINOR: Three I object to as incompetent for it does not show or tend to show in any way what the damage was, nor does it give any aid to the court in determining the damage. It is admitted there were holes struck in the barge; that is not denied.

COURT: Objection overruled.

Marked Libellant's Exhibit 9.

Mr. MINOR: I desire to make the same objection to number 4, that it is incompetent inasmuch as it doesn't show the extent of the injury or aid the court in determining the extent of the injury and therefore is incompetent and immaterial.

COURT: Objection overruled.

Marked Libellant's Exhibit 10.

Mr. MINOR: As far as number 5 is concerned, your Honor, I make the same objection to that, that it doesn't show or tend to show.

Marked Libellant's Exhibit 11.

Mr. C. E. S. WOOD: That is the one we examined him on the stem.

Mr. MINOR: Now, six, seven and eight, which are regarding the operations of wrecking down there, I don't know for what purpose they are offered in evidence; that they did have some machines down there taking up the Henderson and raising her is not denied. I don't understand that these gentlemen claim that from these photographs, that the court will be able to determine what work was done or how any work was done, the value of the work done or the nature of the work done.

Mr. C. E. S. WOOD: We can withhold these until the time of damage; they are not of much value, but in showing the expense we were put to, we thought they would help the court in showing the magnitude of the operations.

COURT: Objection overruled.

Pictures marked respectively Libellant's Exhibits 12, 13 and 14.

Mr. C. E. S. WOOD: We also offer in evidence the diagram just referred to and marked with the name, J. W. Shaver, and ask that it be marked.

Marked Libellant's Exhibit 15.

Cross Examination.

Questions by Mr. MINOR:

Captain Shaver, let me get the dimensions, will you? The Henderson is how long?

A. 158.7 feet.

Q. Does that include her wheel?

A. No, sir, the wheel—that is the hull.

Mr. C. E. S. WOOD: I forgot one question. I don't remember whether it is admitted in the pleadings. Who was the owner of the Henderson at the time?

A. Shaver Transportation Company.

Mr. C. E. S. WOOD: Who is the owner now?

A. Shaver Transportation Company.

Mr. C. E. S. WOOD: Did the Oregon Round Lumber Company ever have any interest in her?

A. No, sir.

Mr. C. E. S. WOOD: And from whom did you receive your instructions to go down and tow that?

A. To tow the oil barge?

Mr. C. E. S. WOOD: The oil barge?

A. The Oregon Round Lumber Company.

Q. (Mr. MINOR) She is 158.7 feet long?

A. Yes, sir, that is the hull.

Q. That is the hull; how long is her—how much does the wheel add to that?

A. The wheel and fantail and all would be about 24 feet— 20-foot wheel, and 18 inches between the wheel and the fantail would be $2\frac{1}{2}$ feet; be about 24 feet—perhaps 25.

Q. She is 31 feet—

A. For beam.

Q. Beam?

A. Yes, sir.

Q. And she has—

A. Guards on each side 22 inches.

Q. Guards 22 inches?

A. Yes, sir.

Q. And she was $7\frac{1}{2}$ feet depth of hold?

A. Yes, sir.

Q. Did she use a fender?

A. Yes a rope fender, always in towing ships.

Q. How thick is that?

A. Perhaps about six inches.

Q. Not a foot, you think?

A. A foot, no, sir. Some times when we make them new they are a little thicker, but they usually squeeze down to about six inches.

Q. So you make the Henderson about thirty-four eight-tenths beam, including her guards?

A. Yes, sir, I think so. Of course that is mid-ships. She is not that wide at the forward part of the house.

Q. I understand that. Not at the forward part of the house. That doesn't make any difference as far as width there is concerned. She would set off just as far from the ship there—

COURT: I am afraid the bad example is having effect on you. I couldn't hear the question.

Mr. MINOR: I beg your pardon. I confess I was

at fault, your Honor. I say that wouldn't make any difference as far as the distance from oil barge is concerned, would it?

A. In what way do you mean? A straight line will be closer.

Q. But if she was sitting parallel with the oil barge she would be just—

A. If she was sitting parallel, but I never saw them tow that way.

Q. If she wasn't sitting parallel, would be just the distance the angle would be off?

A. Yes, sir.

Q. The beam has nothing to do there. Only the angle would have anything to do with that there?

A. The beam would have something to do there, for anyway two feet narrower at the forward part of the house than she was back there.

Witness Excused.

Mr. C. E. S. WOOD: We are about through with the case with this suggestion of arrangement. We have a witness, the engineer of the Henderson at the time of the collision, who is still on her, and we expect him to be here tomorrow morning. We can take the time and read our depositions now, or we can, as the court prefers, let the reading of the depositions wait until the last, and rest with the understanding that we can put on this witness tomorrow.

COURT: Mr. Minor, are your witnesses here, any of them?

Mr. MINOR: I don't think so. I told them they

needn't be here until tomorrow morning.

COURT: You had better read your depositions.

Mr. C. E. S. WOOD: My idea was, if Mr. Minor had any witnesses to put on now, these depositions could as well wait. The court suggested the case might have to go to an examiner and I wanted to give all the time possible to living witnesses.

COURT: As I understand, Mr. Minor, you are not ready to put on any witnesses at this time.

Mr. MINOR: I apprehend they will have to put on their witnesses in regard to damage anyway before I put on any witnesses, do they not, or does your Honor intend to refer that to an examiner? That is one reason why I haven't the witnesses here, your Honor.

Mr. C. E. S. WOOD: I thought I made this clear. This is in my mind: Of course we can go ahead regularly, but I thought the question of damages often becomes the subject of reference even after the main issue is taken and I thought if there was going to be any crowding on time—I am trying to give you the Court's ear—and I thought we could reserve the question of damages for reference, or something of that kind, or if the Court sits, take that up later.

COURT: I think the Court's time should be as evenly divided as can be. If I can only be here this week, I think you should have three days and the other side too three days.

Mr. C. E. S. WOOD: That was my idea.

Mr. MINOR: There are only two more left, and

I want to apologize to your Honor for not having my witnesses here. If I had known they were not going on with their case, I would have had them here.

Mr. C. E. S. WOOD: The court understands my position. I am trying it in an irregular way in order to give the Court's time to the main issue. I don't want to be precluded from putting in my damages in such a way as the Court sees fit.

COURT: I think in the morning, Mr. Minor, you should be prepared with your main case.

Mr. WOOD: I shall be prepared, your Honor.

Mr. ERSKINE WOOD: I will read the deposition of Captain C. B. Sorley, who was the captain of the oil barge. The deposition was taken pursuant to stipulation in the office of Snow & McCamant on Monday, September 16, 1912, present Mr. Zera Snow

Mr. MINOR: We were all present. No question about that.

Mr. Erskine Wood reads deposition of C. B. Sorley, which is marked Libellant's Exhibit 16.

Mr. ERSKINE WOOD: There is another deposition stipulated between the parties. We have agreed to read a certain part or all the testimony of one of the men on the Henderson who is now in Detroit, Michigan, as taken before the Inspectors.

Whereupon proceedings herein adjourned until 10 a. m., Friday, January 10, 1913.

Portland, Oregon, Friday, January 10, 1913, 10 a. m.

CHRISTOPHER O'BRYAN a witness called on

behalf of the Libellant, being first duly sworn, testified as follows:

Direct Examination.

Questions by C. E. S. WOOD:

What is your business, Mr. O'Bryan?

A. Chief Engineer Steamer Henderson, at present.

Q. What was your business in July, 1911, at the time of the collision with the Samson?

A. Chief Engineer Steamer Henderson.

Q. The old Henderson?

A. Yes, sir.

Q. You are now chief engineer of the new Henderson?

A. Yes.

Q. How long have you been a marine engineer?

A. About twenty-three or four years.

Q. How long have you been on the Columbia and Willamette Rivers?

A. About eleven years.

Q. How long have you been with the Shaver Transportation Company?

A. Neighborhood of four years.

Q. Were you on duty at the time of the collision?

A. No, sir.

Q. Where were you just prior to the collision?

A. I was laying in my bed.

Q. Where is that in relation to the engine room?

A. Right forward. The first room forward on the boat.

Q. And how far from the bells?

A. From the bells?

Q. Yes, or from the engineer's station—the levers.

A. Well, I don't know exactly the distance.

Q. Just give a rough guess at it.

A. Well, I suppose it is 50 or 60 feet, something like.

Q. On the same deck with the engine?

A. No, sir.

Q. On the deck above?

A. Yes, sir.

Q. How was the old Henderson lighted, electrically or with oil.

A. With electric lights.

Q. The electric power supplied all of the lights of the boat?

A. Yes, sir.

Q. I wish you would state now briefly what you know of this collision. Wait, before I get away from this last subject, I want to ask a question at the suggestion of counsel. Were the lights in operation?

A. Yes, sir.

Q. And the apparatus in good order that night?

A. Yes, sir, everything was in working order.

Q. Now, I wish you would state what you personally know of the collision. Just state what you heard, what you did.

A. Well, the first I knew there was a crash and the steam pipes breaking off. I jumped out of my room and rushed down the after stairway, down the

deck. I saw the water coming towards the after part as fast as it could come it seemed to me. I thought it was about two feet deep as near as I could see. I ran back to my room to get some clothes on; I had none on to amount to anything. I grabbed a pair of pants and got them partly on and was in some water then, one foot. I got them on and ran aft to get something to do. Saw some lights going by; didn't pay any attention to what it was at the time and tried to get the small boat out.

COURT: Which side were the lights going by.

A. They were some lights. I don't know what they were.

Q. No—which side of you?

A. On the port side.

Q. Of the Henderson?

A. Yes. And Paul Peterson, he is the deck boy on the boat, he and I tried to get the boat down. We were then in the water, then, trying to get that boat, and I rushed back to the wheel house, and I see I couldn't do anything. I was going to leave the boat, and I ran back on the house, for I thought to myself I could stay there for a while. She commenced to roll one way then the other, and finally she settled right down.

Q. What do you mean—settled down- Did she settle down on her keel or on her bilge?

A. Well, she rolled over. She seemed to; looking at it the way she struck, she seemed to lean a little bit to where she was struck and then she rolled over

to the starboard side and then partly back and then down again.

Q. There she stayed?

A. Yes.

Q. When was it that you saw these lights go by? As soon as you rushed out of your stateroom?

A. Yes, sir; there was lights. I didn't understand or pay no attention. The steam was what I was looking after. I wanted to go down and shut something off. I thought something wrong. I couldn't get to it.

Q. But when you took a glance, you remember seeing lights go by?

A. I saw some lights but I paid not much attention.

Q. I know, but I want to get the fact that you did see lights go by?

A. Yes, sir.

Q. Now, did they seem to be going with any rapidity or speed?

A. They were going right along. I wouldn't say. I couldn't say for time, or anything about that. I just simply saw something—lights going by and I went on about my business. I had something else to do.

Q. And all of this was on the port side of the Henderson.

A. Yes, sir.

Q. How long was it, not in minutes, but in long time or short time after the crash before she careened

over and was a wreck?

A. The time?

Q. Yes. I don't mean—you can give it in minutes, if you want to, but I say was it a long time or a short time?

A. Pretty short time.

Q. Could you estimate it in minutes?

A. Well, I could go through the performance, and I think it would take me about three or four minutes, three minutes anyway.

Q. Do you know whether she was backing or not?

A. I wouldn't say.

Q. Suppose the backing bell had been sounded and suppose that she was backing at the time the crash occurred, from what you saw of her actions and careening over, and from what you know of the boat and her engines, could she have been backing at the time of the crash?

A. Well, I don't suppose she could have done much backing.

Q. Could she — how would her wheel be affected by the position that she was in the water after the crash?

A. After the crash? Well, the first thing when she struck, she sure went down forward. That gave her no power on the water.

Q. Then when she careened over, could she do any effective backing?

A. No, sir, the steam—you see when all those

pipes were let go, there is not much power there.

Q. Then take it all together, what is your judgement, could she after the crash have done any real effective backing?

A. No, sir, not any real effective backing.

Q. I wish you would describe the relation of the stairway that you ran down. I think you said you ran down a stairway?

A. Yes, sir.

Q. To the engine room or the engineer's station by the levers. How is that stairway on the boat in relation to the engine room?

A. Well, it leads forward right close to the engine room.

Q. Leads from the main deck to the upper deck right in front of the engine room?

A. From the main deck.

Q. And how far was its lower step or entrance to it from below to the engine room?

A. Oh, I wouldn't say exactly. I should judge it is around about 30 feet, something like that. 25 or 30 feet. I don't know exactly. I couldn't tell.

Q. Then you said also that you ran to try to get a boat loose.

A. Yes, sir.

Q. Where was that boat situated?

A. Situated on the port side.

Q. And on what deck.

A. On the deck that I left my room on.

Q. That is not the main deck but the upper deck?

A. Yes.

Q. And what kind of a boat is it?

A. It was a small skiff or work boat, might call it a work boat.

Q. Where was the engine room in relation to the boat itself—forward or aft?

A. The boat was right about over the port cylinder.

Q. The boat was?

A. Yes, sir.

Q. Yes, but I say where was the engine room in relation to the deck of the Henderson, forward or aft. Was the engine room itself forward on the Henderson or aft on the Henderson?

A. In the after part.

Q. Now, in order that there may be no mistake about it, I will repeat to you, and you see if I get it correctly, what you did. When you heard the crash you jumped out of your room and saw steam or heard steam from broken pipes.

A. Yes, sir.

Q. And you saw those lights go by on the port side?

A. Yes, sir.

Q. And now when was it that you found yourself in water the first time?

A. After coming back.

Q. Then you went on down to the lower deck, is that right?

A. No, I went down to the lower deck first, then came back.

Q. I see. I was picking it up where I left off. You jumped out of bed, you heard the broken steam pipes, saw the steam, saw the lights go by, and ran down this stairway to the lower deck; there you found your feet in water. Is that right?

A. Not on the lower deck.

Q. Not on the lower deck?

A. I saw the water rushing to me.

Q. On the lower deck?

A. On the lower deck.

Q. Then you turned back?

A. And went up the stairway.

Q. Went up again and then you went to the boat?

A. I went to my room.

Q. Then you went to your room?

A. Got a pair of pants.

Q. Started to put on your trousers.

A. Put them on.

Q. While you were doing that, you found your feet—

A. I was in water then. The water was coming in there then.

Q. Then you went to the boat?

A. I went back to this small boat.

Q. And as I understand it, while you were there she commenced her careening?

A. Down head first and commenced to roll.

Cross Examination.

Questions by Mr. MINOR:

Mr. O'Bryan, where were you when you went off duty that night?

A. Sir?

Q. Where were you when you went off duty that night?

A. Speak up, I am hard of hearing.

Q. Where were you when you went off duty that night?

A. Where was I when I was on duty?

Q. When you went on duty?

A. I was in bed.

Q. No, where were you in the river? You were on duty that night part of the time, weren't you?

A. Yes, sir.

Q. What time did you leave?

A. I left at one o'clock.

Q. And where was your boat then?

A. The steamer?

Q. Yes.

A. She was up towards Bugby Hole.

Q. Going up towards Bugby Hole?

A. Yes.

Q. Do you know whereabouts she was in the river channel?

A. Sir?

Q. Do you know where she was in the river channel?

A. Well, I generally look out; we are generally in the channel.

Q. I know, but how far down? Did she reach the point of Puget Island?

A. I wouldn't say. I don't know about that.

Mr. C. E. S. WOOD: That is not cross examination.

Q. Now, you spoke about lights. I believe you said they were electric lights?

A. Yes, sir.

Q. Were your side lights electric lights?

A. Yes, sir.

Q. How do you turn those off and on?

A. That is adjusted from the pilot house.

Q. Can you turn them both off together, or do you turn them off separately?

A. That is up to them. I don't know whether they turn on and off at any time or how they do it.

Q. You don't know how that is done at all. Do you know whether they are on one circuit or not?

A. Yes, sir, they are certainly on the circuit that lights the pilot-house. When the dynamo starts the side lights are on at all times.

Q. And both on the same circuit, are they?

A. Yes, sir.

COURT: Captain from the time you got up and started on this run you have told about, did you stop any place to talk to anybody or do anything until you got back to work at that boat?

A. No, sir.

COURT: You kept moving?

A. Yes, sir, just kept a moving.

Mr. C. E. S. WOOD: And did you go leisurely or in a rush?

A. I was running all the time.

Witness excused.

Mr. C. E. S. WOOD: With the exception of reading the Crossen testimony, which I think we had better postpone, this will be our case in chief.

COURT: No question but counsel knows what is going to be read.

Mr. C. E. S. WOOD: We have no objection to all of it, but it is one of those examinations before the Inspectors at which everybody took a hand—about half-a-dozen counsel and we thought for this record we would try to agree with counsel what was to go in.

Mr. MINOR: The understanding is, your Honor, either side may read what they choose of it.

Mr. C. E. S. WOOD: We wish to avoid putting it all in merely because it will serve no purpose in there and is a repetition.

Mr. SNOW: It is understood that the Crossen testimony is to be deemed read—such parts of it as you desired? (Page 972)

Mr. WOOD: Yes, we will read it later.

Mr. SNOW: Now, if your Honor please, I want to understand the order of proof, for I have a motion to make at the close of the proof, that I want to present. As I understand, now, counsel for Libellant, this constitutes the testimony in chief of the libellant on the

question of liability?

C. E. S. WOOD: Yes—or there was one thing; I don't think in the United States Court it cuts any figure—that is we have a state license. Do you make any point on that?

Mr. SNOW: No, I don't make any point.

Mr. MINOR: No, I make no point.

Mr. SNOW: Then, if your Honor please, we will assume that the testimony of the Libellant in chief is closed, reserving of course the giving of testimony later on the question of the amount of damages, and in behalf of the Standard Oil Company, incorporated under the laws of the State of California, and who is respondent in personam to the supplemental libel filed by the libellant in this case, I move for a dismissal of this supplemental libel as to this defendant—the dismissal of the Libellant's suit as to this defendant, on the ground that the evidence offered by the libellant does not show or tend to show any liability whatever on the part of the Standard Oil Company. Now, I will argue that point, if your Honor desires.

COURT: I would rather hear the argument all at one time. The motion may be considered made at this time.

Mr. SNOW: My motion, of course, is based upon the fact that the proof, as it now stands, entitles us to discharge.

COURT: If your motion stands or is overruled at this time, you wouldn't introduce any more testimony, would you, on that question? That is a matter of con-

tract that you are standing on?

Mr. SNOW: Something more than a mere matter of contract, if your Honor please. We may concede all that counsel for libellant may claim for the benefit of this contract in order to hold the Standard Oil Company. He has not only got to show that we had engaged the Henderson,—By the way, Mr. Wood, has Mr. O'Reilly furnished any further correspondence on that?

Mr. C. E. S. WOOD: No I forgot it, but we promised to do it and we will do it.

Mr. SNOW: All the way through with this case, if your Honor please, the Standard Oil Company is defendant in this case, and while, as far as the proof is concerned, we are in hearty accord with the libellant's proof, because we think unquestionably the responsibility belongs where it belongs—on the Samson, nevertheless, as far as the law of liability is concerned, while there may be some disagreement between Mr. Wood and myself on the question of the law of liability ultimately, there is no question but that in order to recover against the Standard Oil Company, two things must be shown, one of which is that we had engaged the Henderson to do the towing. The next thing is that the Standard Oil Company, through its pilot—Sullivan, was negligent, which caused this accident. Now, these two things shown, under the doctrine announced on exceptions to libel, we may be held.

COURT: I will hear from the other side.

ARGUMENT C. E. S. WOOD.

COURT: I think, under the pleadings as settled and the fact that Mr. O'Reilly hasn't produced the correspondence yet to show what the contract is, and that in equity and also in admiralty everything decided should be embodied in one decree and not cut up piece-meal by different orders, that this motion will have to be denied, without intending to indicate a ruling as to the sufficiency of the present state of the proof. Of course trying a lawsuit like this isn't a mere game. If the evidence of the respondent is sufficient to show that Captain Sullivan and Oil Barge 93 were to blame, after you were dismissed out of the case, the court wouldn't want to mete out vicarious punishment to the respondent in order to give the Henderson what was her due, after you were out of the case. The motion will be denied at this time.

Mr. SNOW: If there is any more proof, I want to see what it is before we close. I will take an exception, of course.

COURT: Has Mr. Snow any objection to going into the respondent's case?

Mr. SNOW: Upon the understanding that if there be any correspondence, we can interrupt the proof of the respondent.

COURT: With that understanding, the Samson may proceed without prejudicing any of your rights.

Mr. SNOW: Inasmuch as Mr. O'Reilly was asked on cross examination to produce the correspondence, when produced it may go in as a part of his cross-ex-

amination and thus end the matter.

COURT: It is so understood.

Libellant Rests.

